

***United States Court of Appeals
for the Second Circuit***



EXHIBITS

** PLEASE RETURN TO **
** RECORDS ROOM **

#916
#928

77-1491

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA,

Appellee,

-against-

MOSES WEINDLING and
PATRICIAL JOANNE McINTYRE,

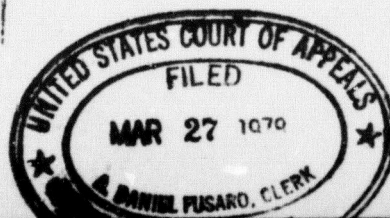
Defendants-Appellants. :
-----X

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

TRIAL TRANSCRIPT
(with deletions)

(Volume -2- Pages 404-843;
except no copies of: pp.
673-737; 764-822; and 826-841)

HYMAN BRAVIN
Attorney for Appellant
Patricia Joanne McIntyre
6 East 45th Street
New York, New York 10017
212 OX 7-1055



S A N D R A A N N J E R O N I M O, called as a witness
by the Government, being first duly sworn, testified
as follows:

DIRECT EXAMINATION

BY MS. COTE:

Q How do you prefer to be address?

A Ms.

Q Are you presently employed?

A Yes, I am.

Q What do you do to earn a living?

A I make stuffed toys, children's toys.

Q Do you work for someone?

A No. I work for myself.

Q Have you done any other work during this last
year?

A Yes. I work as a waitress at the Grass
Restaurant.

Q Where is Grass Restaurant located?

A 75th Street and First Avenue.

Q Approximately when were you employed in Grass
Restaurant?

A I started working there at the end of February
and I quit about six weeks ago.

Q Can you explain why you quit?

1
2 A My business got very busy and I could not do
3 both.

4 Q By your business --

5 A My toys. I was doing both at the same time.

6 Q What kind of place is Grass Restaurant, if you
7 could just tell the jury what kind of clientele, what kind
8 of food; describe Grass Restaurant a bit.

9 A It was originally supposed to be like a health
10 food restaurant and they serve big salads, sort of Amer-
11 ican fare, steaks and that sort of thing. At lunch it's
12 pretty much people in the neighborhood, people who work in
13 the neighborhood, people who live in the neighborhood.
14 At night it's more of a singles crowd.

15 Q Did there come a time in April while you were
16 working at Grass Restaurant that some people were
17 arrested?

18 A Yes.

19 Q Did you see who had been arrested?

20 A Yes.

21 Q Where were they when you saw them?

22 A I saw them outside on the street as they were
23 being escorted into the police cars.

24 Q Could you just very briefly describe who you
25 saw under arrest?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pqb

Jeronimo-direct

406

A I saw only the back of a man. I didn't see his face. In handcuffs, and I saw a young woman also.

Q Had you seen that young woman earlier in the day?

A Yes, I had.

Q Where was that?

A I had seen her downstairs in the ladies' room.

Q Can you please describe to the jury what you saw.

A During the afternoon I had to go to the ladies' room and I went downstairs and I opened the door and there was this tall blonde woman speaking to a brunette woman just as you open the door, and behind her there was another woman who was washing her hands getting ready to leave the bathroom.

Q Excuse me. Which of those three women was the woman you saw under arrest later that --

A The tall blonde woman.

MR. JOY: She didn't testify to that at all.
I object.

MS. COTE: I believe my question was, had you seen the woman that you saw under arrest earlier in the day and she said yes.

THE COURT: I thought so.

1
2 Q So you said that the blonde-haired woman
3 was the one that was under arrest?

4 A Yes.

5 Q Can you describe who she was talking to?

6 A She was talking to another woman who was some-
7 what shorter who had long dark Brunette hair, curly hair,
8 who was tanned, wearing a sweater with some sort of jewelry
9 on her. I remember that vaguely.

10 Q Do you remember what the third woman looked
11 like who was washing her hands?

12 A No.

13 Q Where is the ladies' room in Grass Restaurant?

14 A It's in back of the store, in the corner, down-
15 stairs in the basement.

16 Q How far from the bottom of the stairs is it?

17 A Not more than four or five feet.

18 Q From which direction as you leave the stairs?

19 A On the left-hand side.

20 Q Describe what happened as you looked inside
21 the bathroom and saw these two women talking and one washing
22 her hands.

23 A The two, the Brunette woman with the long hair
24 and the blonde woman were standing in the doorway talking
25 in low tones, and as I opened the door they looked at me,

1 which made me hesitant to go in.

2 Q Can you describe how they looked and how they
3 were relating to each other in any more detail?

4 A They were talking face-to-face. As I said, it
5 was very low tones, very confidentially.

6 MR. ANOLIK: I object to the word "confident-
7 ially".

8 THE COURT: I will sustain that. Strike it out.

9 Q How far apart were they from each other?

10 A It is a small area there. I would say no
11 more than a foot, face-to-face.

12 Q What did you do at that point?

13 A I waited outside.

14 Q For approximately how long?

15 A Not more than maybe three or four minutes.

16 Q Then what did you do?

17 A And then I decided I really had to go to the
18 bathroom and I went in. I went by them.

19 Q When you went in the bathroom at that point
20 who was in there?

21 A The woman with the long brown hair and the
22 blonde woman.

23 Q Was the woman who had been washing her hands
24 in there?
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

Jeronimo-direct

409

A She had left.

Q Tell us what happened after you went into the bathroom.

A I excused myself, passed them and went into the stall which is at the far end of the bathroom.

Q Can you describe to the jury what the dimensions of the bathroom are.

A From the opening of the door to the first riser where you go into the stall is perhaps ten feet, not more. There are two washstands on the right-hand side parallel with the counter and then there is a one step up and there is a john.

Q How wide is the bathroom?

A The walking area can't be more than two and a half feet, three feet, it's just barely enough room to get by.

Q What is the entrance to the stall like?

A It's a door that pushes in.

Q How big is this door?

A It goes from shoulder to knee.

Q What happened after the point you passed the two women?

A I was in the stall and I heard the brunette say to the blonde "That's the best I can do for you", or

"that's th- best advice I can give you."

Q How do you know it was the brunette speaking to the blonde.

A I could see over the top of the door.

Q What happened after that?

A I finished what I had to do. They finished talking. I went and washed my hands and they left.

Q Did you see either of them after this point before you returned upstairs?

A Yes, when -- I finished washing my hands and went out and I saw the blonde woman going up the stairs.

Q Did you see the brunette woman anywhere?

A No.

Q Tell us what happened at this point.

A She was near the top of the stairs and I was at the foot of the stairs and I heard her say "Oh, shit". That's all that happened.

MR. ANOLIK: I object on relevancy, your Honor.

THE COURT: Overruled.

Q What did you do at this point?

A I went upstairs and took care of what I had to take care of. I went into the kitchen, looked at my tables. I don't remember.

Q What is the next thing you remember happening

A That one of the employees said that someone had been arrested and we all -- most of us who were working went to the front door and saw the people being led off into the police car.

Q That is the point you saw the blonde woman being put into the police car?

A Correct.

Q Do you remember how the blonde woman was dressed that day?

A Yes. She had on a beige jumpsuit.

Q Why do you remember that?

A She's a very tall person and she was very well-dressed and you noticed her.

Q Have you seen that blonde woman who was in the beige jumpsuit any time since that day?

A No.

Q Had you seen her any time before that day when you saw her arrested?

A No.

Q I would ask you to look around the courtroom and take your time. If you want you can step down from the stand and walk more closely to people. If you want, and tell me if you see --

1 MR. JOY: May we approach the side bar?

2 THE COURT: No. I don't see any need for that

3 MR. ANOLIK: On the Wade, we would like to

4 approach.

5 We would like some information with respect to

6 those cases.

7 MR. BELLER: There is none to furnish.

8 MR. ANOLIK: I am not so sure about that.

9 THE COURT: This is not the time to raise it.

10 MR. ANOLIK: We didn't know about it before.

11 THE COURT: Let's proceed.

12 Q Would you please take your time, look around

13 the courtroom and tell me if you recognize anyone that you

14 had seen that day.

15 A Yes.

16 Q Would you please point that person out?

17 A The woman here (indicating).

18 Q Can you describe whom you pointed out so everyone

19 will know?

20 A She is the young woman I saw in the restaurant

21 in the ladies' room and who was arrested.

22 MS. COTE: May the record reflect --

23 THE COURT: Tell us where she is sitting and

24 what she is wearing.

25

THE WITNESS: She is sitting at the second table in front of me and she is wearing a lavender sweater with a neck scarf.

THE COURT: The record may reflect the identification.

Q When did you first meet me?

A About a week and a half ago.

Q After you saw these people being arrested or outside on the street being put into police cars, what happened at the restaurant and what did you do?

A Well, we were talking about what had happened and I went back to the rear of the restaurant and I saw the woman that this young woman had been speaking to that had been in the ladies' room, seated at a table.

Q Can you describe where that table was?

A It was in the rear of the restaurant about two tables away from the entrance to the stairwell to the rest room.

Q Do you know where the table is that the person who was arrested was sitting at that day?

A I didn't know it at the time, but I knew it afterwards --

MR. JOY: I object to that on the basis of hearsay.

1
2 THE COURT: I will sustain that.

3 Q Did you learn that same day where the woman
4 who was arrested had been sitting?

5 A Yes.

6 Q How did you learn that?

7 A The police officers had come back and had
8 searched the table and the chairs around the table that
9 they had been sitting at.

10 MR. JOY: Hearsay.

11 THE COURT: I gather this is not.

12 You were there when they were looking?

13 THE WITNESS: Yes.

14 MR. ANOLIK: That would show what table they
15 searched.

16 THE COURT: That is all we have at this point.

17 Q From the table that the woman, the brunette-haired
18 woman, was sitting at, would a person be able to see the
19 table that the officers were searching when they returned?

20 A Yes.

21 Q And vice-versa, I take it?

22 A Yes.

23 Q Did anything else happen during the time
24 that this search took place? Was the table the only area
25 that was searched?

1
2 A No. The police officers asked for someone
3 to take them downstairs because I had mentioned that I
4 had seen her downstairs in the ladies' room and they went
5 downstairs with me and searched the ladies' room area and
6 down in the kitchen area. There are storage rooms and
7 things like that downstairs.

8 Q Who was participating in this search?

9 A As far as the employees were concerned?

10 Q Were there any people other than the agents
11 themselves?

12 A Myself and another waitress.

13 MS. COTE: No further questions, your Honor.

14 CROSS-EXAMINATION

15 BY MR. ANOLIK:

16 Q That is Ms. Jeronimo?

17 A Correct.

18 Q Ms. Jeronimo, you say you spoke to the United
19 States Attorney for the first time about a week and a half
20 ago, is that correct?

21 A That's correct.

22 Q Did you speak to any detective or police
23 officers prior to that?

24 A No.

25 Q Can you please tell me whether or not you were

1 contacted by any police officers before you came to see Ms.
2 Cote, Ms. Cote being the Assistant United States Attorney
3 who was questioning you just a moment ago?
4

5 A Yes.

6 Q Who?

7 A John DeRosa.

8 Q Did you have a conversation with John DeRosa
9 at that time?

10 A On the telephone.

11 MR. BELLER: Could we know when, your Honor?

12 Q At the time you spoke to him, when did you
13 speak to him?

14 A A few days before I saw Ms. Cote.

15 Q That would be maybe two weeks ago?

16 A I'm not exactly sure.

17 Q Two, two and a half weeks ago?

18 A Approximately.

19 Q Did you know who John DeRosa was?

20 A He identified himself as who he was.

21 Q As a voice on the telephone?

22 A No, not as a voice on the telephone. He asked
23 me if I remembered an incident at Grass Restaurant, and
24 he identified himself as one of the arresting officers.

25 Q You just took that at face value, is that correct?

MS. COTE: Objection, your Honor.

THE COURT: Sustained.

Q Did you have any other means of identification other than the fact that he was a voice on the telephone?

MS. COTE: Objection, your Honor.

THE COURT: Mr. Anolik, do you want a side bar to urge upon me the relevance of that question?

MR. ANOLIK: I want to find out how she knows it was John DeRosa she spoke to.

THE COURT: He identified himself.

MR. ANOLIK: Had she ever spoken to him before?

THE COURT: Ask her that.

Q Had you ever spoken to John DeRosa before?

A I spoke to him the time he was at Grass.

Q At Grass Restaurant?

A That's right.

Q You remember his voice from that period of time?

A No, I did not.

Q So you had never spoken to him on the phone before?

A No.

Q You merely heard a voice that said he was John DeRosa, true?

1

pgb

Jeronimo-cross

418

2

A Yes.

3

Q You took it at face value?

4

A Yes.

5

MS. COTE: Asked and answered, your Honor.

6

THE COURT: I sustain the objection.

7

Q Can you tell us whether or not there came a time

8

that you saw this John DeRosa?

9

A Yes.

10

Q When was that?

11

A Shortly after I spoke to him on the telephone.

12

Either the next day or the same day.

13

Q Did he show you any pictures at that time?

14

A No.

15

Q Have you ever seen any pictures of anybody in

16

this case?

17

A Present?

18

Q Yes.

19

A No.

20

Q Did you ever see any drawings?

21

A No.

22

Q When was the first time that you saw the young

23

lady you described here since you claim you saw her in the

24

restaurant?

25

A I have not seen her since.

Q Was in this courtroom?

A Correct.

Q How many people do you think you wait on a day while working at the Grass Restaurant?

A In a day?

Q Yes.

A Perhaps ten or fifteen.

Q How many do you see in the restaurant in a day?

A Probably twice as many.

Q You worked every day?

A Four days a week.

Q Is it your testimony that you can remember an incident that occurred in the bathroom prior to an arrest having taken place?

A Yes.

Q I didn't finish my question.

A Sorry.

Q Did you make any notes of that?

A No.

Q Have you ever testified in a court of law before?

A Yes, I have.

Q What kind of cases?

A It was during the Boston strangler case.

Q You were one of the witnesses in that?

1
2 A Not in the case but it was a case that was
3 presumably -- it was at the same time and they thought this
4 man was, and it turned out he was not.

5 Q You were one of the people who testified for
6 the prosecution?

7 A Yes.

8 Q You testified against that person, didn't you?

9 A I did.

10 Q You identified the wrong person, didn't you?

11 A No, I did not.

12 Q You said it turned out not to be the person?

13 A I misphrased it. Excuse me. At the time when
14 the Boston strangling which was going on, they thought
15 that this was the man. It turned out they had caught the
16 man before this man was caught. It was going on all at the
17 same time. I did not identify him incorrectly as the
18 Boston strangler.

19 Q You identified him as somebody else?

20 A I identified him as himself who turned out to
21 be a rapist.

22 Q Did he rape you?

23 A Attempted.

24 Q When was this about?

25 A This goes back a long time. Maybe ten years.

Q Were you living in Boston at that time?

A Yes.

Q Going to school there?

A I was living there.

Q Can you tell us whether you testified in any other court?

A No.

Q Did you testify in the grand jury in that case?

A I have no idea what it was. It's a long time ago.

Q Prior to going into court in that case had you testified before another body known as the grand jury?

A I don't remember.

Q You have no recollection of that?

A No. I just remember being in the courtroom when the actual trial was on.

Q But you had spoken to police officers prior to going into that courtroom, hadn't you?

MS. COTE: Objection. I fail to see the relevance of any of this.

THE COURT: Come to the side bar.

(At the side bar.)

MR. ANOLIK: I am trying to establish that woman was traumatized at one time in a criminal case and

1 she views the police as someone who came to her aid, that
2 she may be very suggestive because of this experience;
3 that she desired to help the police in any way, shape or
4 form, and she may be open to suggestion as to the identi-
5 fication. I am trying to develop what was said to her,
6 what experience she had. She is a surprise witness to some
7 extent. We are a little bit surprised. We were unaware
8 of the fact that this witness existed. I have come to an
9 area where this witness did testify in an emotional-type
10 situation and needed a degree of rapport with the prosecu-
11 tion. Very often raped woman become very indebted --

12 THE COURT: Get to the point then.

13 MS. COTE: There was nothing suggested to her.

14 MR. BELLER: Let's go into the details of
15 the attempted rape.

16 MR. ANOLIK: I don't intend to.

17 THE COURT: I did have a feeling you were going
18 into an awful lot of grain-of-sand-by-grain-of-sand
19 detail.

20 MR. ANOLIK: I have to draw her out.

21 THE COURT: I don't deduce anything other
22 than she is a witness on the stand and you are asking
23 a lot of questions that seem to have marginal relevance.

24 MR. ANOLIK: I would appreciate a certain
25

amount of latitude.

THE COURT: I will give you latitude.

MR. JOY: I would like to note my objection on the record to the Government proceeding in this fashion; this is the first time that this witness has supposedly seen the defendant. She is the only female seated at the defense table. I think the suggestive nature of the showup violates the constitutional standards set down by Wade.

MR. ANOLIK: I agree with that. I join in that. That's the reason I wanted a side bar. She was told she was testifying with respect to a woman, your Honor, that presumably was the person she identified. She obviously knew this woman was now on trial and she is the only woman in the courtroom.

MR. BELLER: Your statement at the time you made the objection was that you wanted information. You want to know whether there had been a showup. There had not been one.

MR. ANOLIK: Which is worse.

THE COURT: That motion is denied.

(In open court.)

Q Ms. Jeronimo, you became rather friendly with some police officers in Boston during your experience, your

unfortunate experience?

A Friendly with them?

Q In the sense that you gained a certain rapport with them, didn't you?

A Presumably.

Q They were trying to help you, weren't they?

A I don't know that they were trying to help me.

Q You had been the victim of a horrible attack and you certainly went through a deep emotional experience, did you not?

A I did.

Q And police were there trying to help convict the person who had done this thing to you, isn't that true?

A This was not necessarily to help me, but to hang him.

Q I understand that. You wanted to hang that individual, isn't that true?

A No, it was not true. I did not want to prosecute.

Q The person had been accused of a crime, isn't that so?

A Correct.

Q Had you captured or had someone else captured him?

1 A I didn't capture him. They found him.

2 Q He had been captured by the police?

3 A That's correct.

4 Q And the police thought he was likely the Boston
5 strangler?

6 A That's correct.

7 Q Therefore because he had been captured by the
8 police you became a witness in that case, isn't that so?

9 A Presumably.

10 Q Because you had previously given them an
11 identification, isn't that so?

12 A Yes.

13 Q When you came into court you identified him
14 again, isn't that so?

15 A Absolutely.

16 Q And you were told in this case there was some
17 young lady on trial, did they tell you what she was on trial
18 for?

19 A No.

20 Q You don't know what this case is about even?

21 A When you say did they tell -- wait a minute,
22 excuse me. When I was first approached by Mr. DeRosa
23 I was asked if I remembered what happened that day and I
24 told him what I remembered. Obviously I know what this is
25

1
2 about.

3 Q You know that there is a person on trial and
4 you are being brought in here to identify her, isn't that
5 true?

6 A I don't know that that's why I was brought here.
7 Presumably I was brought here to tell what I saw.

8 Q You don't think that you were brought here
9 because they expected you to identify this person as the
10 person you heard?

11 MS. COTE: Objection, your Honor.

12 THE COURT: I sustain it.

13 Q Were you told why you were being brought into
14 court today?

15 A I was told that I was to tell what I remember,
16 what happened on the day that the arrest was made in Grass
17 Restaurant.

18 Q You have been in a courtroom before, haven't you?

19 A I believe I established that.

20 Q You know generally that there are prosecutors
21 and defense lawyers and defendants in a courtroom, don't you?
22 Isn't that true?

23 A My dear sir, we all see Perry Mason.

24 Q You know it, don't you?

25 A Yes.

1
2 Q Therefore, you knew exactly where the defendants
3 would be seated and where the defense attorneys would
4 be seated and where the prosecutor would be seated, isn't
5 that true?

6 A No, sir, that is not true. Not exactly.

7 Q That is the only woman at this table, isn't that
8 true?

9 A It certainly is.

10 Q So you were not surprised when you were asked
11 to identify someone; you had a very easy job of it, didn't
12 you?

13 MS. COTE: Objection, your Honor.

14 THE COURT: Sustained as to form.

15 MS. COTE: Your Honor, may I ask --

16 MR. ANOLIK: I would ask she not make a speech.
17 If she wants something at the side bar, fine.

18 THE COURT: I sustain her objection in any event.

19 MR. BELLER: Please lower your voice.

20 MR. ANOLIK: I am not raising my voice. I
21 apologize, if I am.

22 THE COURT: Counsel, go ahead.

23 Q Ms. Jeronimo, when was it for the first time
24 you knew that you were going to be a witness in this case?

25 A About a week ago.

Q Were you debriefed by anybody?

MS. COTE: Objection, your Honor.

THE COURT: Continue.

Q Did anybody ask you to tell what you knew about this case?

A Yes.

Q Were you asked questions and did you give answers?

A Yes.

Q Did anybody put you on like a pretended stand and say I'm going to ask you questions and you gave answers just like you might be on the witness stand?

A We went over what I had said.

Q Did anyone pretend to cross-examine you like a defense counsel might cross-examine you?

A No.

Q You have been cross-examined before by defense counsel, haven't you, in the Boston case?

A Yes, sir, I have.

Q By the way, do you see anybody else in this courtroom whom you saw at that restaurant?

A Not that I remember.

MR. ANOLIK: I have no further questions.

CROSS-EXAMINATION

BY MR. JOY:

Q Ms. Jeronimo, your job at Grass Restaurant was a waitress, is that right?

A That's correct.

Q Did you have the same table area each day you worked?

A That's correct.

Q You moved around?

A Correct.

Q What table area did you have on the day of the arrest?

A I was in the rear of the restaurant.

Q Did you wait on the defendant Patty McIntrye?

A No.

Q Pardon?

A No.

MS. COTE: Excuse me. Perhaps Mr. Joy should clarify what the rear of the restaurant is.

THE COURT: Let's see what develops.

Q Have you in the course of being prepared for your testimony today, did you describe where you had waited on tables?

MS. COTE: Objection.

1
2 THE COURT: I sustain that question given your
3 prefatory comment.

4 Q Did you tell anybody connected with the United
5 States Attorney's office where you were waiting on tables
6 that day?

7 A Yes.

8 Q Were you shown a diagram to describe where you
9 were waiting on tables that day?

10 A Yes.

11 Q When were you shown that diagram?

12 A I was shown a diagram today for the first time.

13 Q At that time you had a discussion as to where
14 in the rear of the restaurant you waited on the tables,
15 is that right?

16 A Not really. We just sort of looked at the
17 diagram schematically. I was not too terrific.

18 Q Was that similar to the diagram that appears on
19 the blackboard?

20 A Yes, I would say so.

21 Q You were asked by the United States Attorney,
22 Assistant United States Attorney, to indicate where you
23 were waiting on tables back there, isn't that right?

24 A Yes.

25 Q On the day this incident took place I believe

1
2 you indicated you and other employees went to the front
3 of the restaurant to see what was happening in the arrest,
4 is that right?

5 A Yes.

6 Q Did there come a time when you went back to
7 your post?

8 A Yes.

9 Q Were there people still in the restaurant at
10 that time?

11 A Yes.

12 Q You continued to wait on tables?

13 A We were pretty much finished for the day.
14 Whoever was left over we took care of them.

15 Q Are there shifts of waitresses?

16 A Yes.

17 Q What time does the first shift begin of wait-
18 resses?

19 A The usual shift is from 11:00 to 3:00.

20 The new waitresses come on at 3:30 or exactly
21 at 3:00?

22 A We rotate as far as -- we usually rotate as
23 far as who stays late until approximately 4:30 or so.
24 The late people come on around four o'clock, at which time
25 they eat and do what they have to do and don't start working

1
2 until a quarter to five or five o'clock. So there is an
3 overlap.

4 Q When did you come on duty that day?

5 A That was early, eleven o'clock.

6 Q What time did you finish?

7 A We were there quite late. It was a very busy day

8 Q Lots of people there?

9 A Yes.

10 Q Approximately how many people does the restaur-
11 ant hold?

12 A To tell you the truth, I never counted, but --
13 I don't know, around 100 maybe.

14 Q One hundred?

15 A Maybe, counting the outside.

16 Q What time was it when you claim you saw Ms.
17 McIntyre down in the ladies' room?

18 A It was some time fourish, four-thirtyish, some-
19 where late in the afternoon..

20 Q In connection with your discussion in this
21 case, did you examine any agent's report, were you shown
22 any?

23 A No.

24 Q Were any times mentioned to you?

25 A No.

1

2

Q Were you asked what time this occurred?

3

A Yes.

4

Q You gave the same answer that you have just

5

given me, is that right?

6

A Well, to be perfectly honest with you at the

7

time I really couldn't place the time. I knew it was late

8

in the afternoon. Then I remembered that one of the late

9

waitresses was already there, so it had to be after four

10

o'clock. She had already been there a few minutes. It

11

could have been 4:15, 4:30.

12

Q You originally thought it was earlier than that?

13

A When you are very busy you sort of lose track

14

of time.

15

Q I gather in the course of your work you go

16

down to the ladies' room from time to time, is that right?

17

A If you can. If you are not too busy. If

18

you need to.

19

Q That's the only bathroom on the premises, is

20

that right?

21

A Yes.

22

Q Do you remember what day of the week this

23

incident took place?

24

A No.

25

Q Did you have a conversation with anybody, any

1 police officer, on the day of this incident?

2 A Yes.

3 Q Which police officer?

4 A It was Officer DeRosa.

5 Q Did you describe to him on that day everything
6 that you have described here in court?

7 A Yes.

8 Q You told him all of that, about the brunette
9 and about Ms. McIntyre, is that right?

10 A That's correct.

11 MR. ANOLIK: Are we now talking about the 28th
12 of April, your Honor?

13 THE COURT: Yes.

14 Q Did you give a description of the brunette
15 woman?

16 A Yes, I did.

17 Q Did you repeat that description to the Assistant
18 United States Attorney?

19 A Yes, I did.

20 Q You gave that description to the officer on
21 the 28th, is that right?

22 A Yes, I did.

23 Q What was that description?

24 A I told you the woman who was sitting in the
25

1

pab

Jeronimo-cross

435

2

corner table had been downstairs --

3

Q A description of what the woman looked like.

4

A Brunette, curly hair, shorter than I.

5

Q And that was it?

6

A Yes.

7

Q What description did you give of Ms. McIntyre?

8

A When?

9

Q On that day.

10

A I didn't.

11

Q You didn't know what she looked like?

12

A No one asked me.

13

MS. COTE: Your Honor, I am not sure --

14

MR. ANOLIK: Objection to what she is not sure

15

of. If there is an objection we should go to the side bar.

16

THE COURT: Let me hear the rest of the objec-

17

tion.

18

MS. COTE: I am not sure the witness knows

19

exactly whom Mr. Joy means when he says "McIntyre".

20

Q Did the United States Attorney, Ms. Cote, or

21

anyone else connected with the United States Attorney, tell

22

you who was on trial here?

23

A No.

24

Q They didn't tell you the name of the case?

25

A No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

Jeronimo-cross
redirect

436

Q Did anybody ask you about a tall blonde?

A Ask me? No.

Q You, during the course of your work, have to go to the ladies' room and it's crowded, is it not?

A Correct.

Q Since it's the only bathroom in the premises everybody who wants to use the bathroom in the restaurant has to use that bathroom, is that right?

A Yes.

Q Every lady, that is.

A Yes.

Q You often go down and you see people in the ladies' room, isn't that right?

A Yes.

Q Occasionally when you go in you find them talking do you not?

A Yes.

Q Sometimes they borrow things from one another, do they not?

A I suppose so.

MR. JOY: I have no further questions, your Honor.

THE COURT: Any redirect?

MS. COTE: Yes.

REDIRECT EXAMINATION

BY MS. COTE:

Q I apologize for referring to the subject, but I would like you to tell the jury why you testified in that rape case.

MR. ANOLIK: I object, on relevancy.

THE COURT: Overruled.

A Well, I had been told that this man had raped something like nine or ten women, all of whom refused to testify because they were professional women and they were nurses, which is why this whole business with the Boston strangler came up. And they were all middle-aged or older, and they told me if I didn't testify he would never get any help, nothing would ever happen to him, he would go on, so I testified with the understanding that he would not be put in jail -- that's the way it was presented to me, that they were not looking to put him in jail, they were looking to give him psychiatric help. Which they did. He was on probation.

Q Regarding the confusion as to whether this person was the Boston strangler or not, that was not your confusion, was it?

A No.

Q It was on the part of the police?

A Correct.

MS. COTE: Thank you.

MR. ANOLIK: I have a couple of questions.

RE CROSS-EXAMINATION

BY MR. ANOLIK:

THE COURT: Bearing upon the redirect?

MR. ANOLIK: Of course.

Q You said that you were told by the police in Boston that this man whom you were going to testify against had raped ten or eleven women?

A Yes.

Q They had already convicted him of those crimes in their own mind --

MS. COTE: Objection.

THE COURT: I sustain the objection.

Q Were you told in this case that there were no drugs found in connection with the surveillance team that had been set up in that restaurant?

MS. COTE: Objection, your Honor.

THE COURT: I will sustain the objection.

Q What if anything were you told with respect to what had happened at the Grass Restaurant on that day, April 28th?

A By whom?

Q By Mr. DeRosa or any other detective.

A Nothing.

Q You did know they came back and were searching?

A Yes.

Q Did they tell you what they were looking for?

A They said an envelope.

Q Did they describe the envelope?

A I don't really remember.

Q You don't remember the conversation you had with them?

A Not word for word. They were looking for something. They collected the garbage, they looked through tables. They got the busboy. They were looking for an envelope.

Q Didn't they describe the envelope they were looking for?

THE COURT: Objection sustained.

Q You assisted them in the search, did you not?

MS. COTE: Objection. This has no relevance to my redirect examination.

THE COURT: I sustained that objection.

Q When you were told in Boston that you had to testify because otherwise this man might go free and never be prosecuted --

1
2 THE COURT: Never receive psychiatric help
3 is what she said.

4 MR. ANOLIK: She understood he would receive
5 it, but he would still be prosecuted.

6 THE COURT: The jury will recall the witness'
7 answer.

8 Let's go forward that way.

9 Q You were told that the person against whom you
10 testified who was being prosecuted in Boston would
11 receive psychiatric help, is that correct?

12 A That's correct.

13 Q You were also told that if you didn't testify
14 he might not be prosecuted at all, isn't that so?

15 A That's correct.

16 Q In this case when you testified here were
17 you told that you were needed as a witness in this case?

18 A No. Not in so many words. They asked me
19 to tell what I saw.

20 Q Did you infer because you were being brought here

21 MS. COTE: Objection, your Honor.

22 THE COURT: I sustain that objection.

23 Q Did anybody say to you in words or substance --
24 maybe I don't know the exact language -- did anyone in words
25 or substance tell you that you were needed as a witness?

MS. COTE: Objection, your Honor. This has nothing to do with my redirect examination.

THE COURT: I will permit this one question.

A No. As a matter of fact when I asked I was given no answer.

Q No answer at all?

A That's correct.

Q Were you served with a subpoena in this case?

A I was not.

Q You were told to come here today and be a witness?

A I was asked to come.

Q You were asked?

A Yes.

Q You had gone over your testimony with at least one Assistant United States Attorney?

MS. COTE: Objection, your Honor.

THE COURT: It is beyond the scope of recross.

Q Did they tell you, anybody, in this case, that if you didn't testify in this case there might not be a conviction here?

MS. COTE: Objection, your Honor.

THE COURT: I will permit it.

A Absolutely not.

1 Q I am not talking about those exact words, but
2
3 in words or substance.

4 A There is nothing wrong with my hearing or my
5 intelligence. The answer to that question is absolutely not.

6 Q I didn't intend --

7 THE COURT: Counsel, go on.

8 MR. ANOLIK: I have no further questions of
9 this witness.

10 THE COURT: Anything else?

11 MS. COTE: Nothing, your Honor.

12 THE COURT: Ms. Jeronimo, thank you very much.
13 You are excused.)

14 (Witness excused.)

15 THE COURT: Do you have another witness?

16 MS. COTE: At this point the Government rests.

17 THE COURT: Ladies and gentlemen, I have a
18 proceeding where lawyers are going to be before me at noon
19 from San Francisco, so I will excuse you at this time until
20 1:45. We will recess the Court until 1:45.

21 (Jury leaves the courtroom.)

22 THE COURT: Motions?

23 MR. ANOLIK: Shall we make them now?

24 THE COURT: Please.

25 MR. ANOLIK: Your Honor, I would move at

1 this time for an order of dismissal pursuant to Rule 29,
2 for an order taking this case from the jury under United
3 States against Taylor, on the grounds, your Honor, with
4 respect to the indictment certainly with respect to any
5 counts involving the three and a half ounces of cocaine,
6 your Honor, that there has been no proof, (1), that cocaine
7 existed because there has been no chemical analysis there-
8 of; and (2), there has been no testimony whatsoever that
9 even assuming the jury would believe that Mr. Minichiello
10 felt something, which he said might have been cocaine, there
11 is no testimony that it was cocaine, even assuming they
12 believed that much of it.

13
14 So we only have --

15 THE COURT: Let me stop you. Wait a minute.
16 Our standard here, and all of us in this room are fully
17 aware of what the standard is, is that if giving the
18 Government's case its best contention there is evidence that
19 the jury could consider and conclude there was three and
20 a half ounces of cocaine. Obviously your motion must fail.

21 MR. ANOLIK: That would be true.

22 THE COURT: Is there not testimony in this case
23 that there was a package that was felt by Mr. Minichiello,
24 that there is a conspiracy, arguably, proven as to the
25 defendants; that at least one defendant represented

1

pgb

444

2

that that package was three and a half ounces of cocaine,

3

and that either the same or the other defendant represented

4

that the sample, Court Exhibit 2, came from that very

5

conglomerate of three packages? Isn't that evidence in

6

the case? That evidence is before us in the record,

7

right?

8

MR. ANOLIK: Not the sample. The sample I

9

think was in powder form.

10

THE COURT: It had been in rock form, as I

11

recall.

12

In any event, was there not testimony here

13

that one defendant said that this sample came from the

14

three and a half, and another defendant said she had tried

15

it the night before and it had injured her nose?

16

On the basis of all of that, is there not a case

17

to send to the jury on the existence of the three and a

18

half ounces?

19

MR. ANOLIK: That is quite true, your Honor, if

20

you want to take it from that point. I am talking under

21

U.S. against Taylor.

22

THE COURT: What is U.S. against Taylor?

23

MR. ANOLIK: 364 F. 2d, a Second Circuit case,

24

which says this, a jury does not operate in a vacuum, but

25

under the supervision of a Judge. If the Judge feels that

1
2 that the quality of the case is such that he ought not let
3 the jury consider it, he has the discretion not to submit
4 it to the jury. I think Taylor is the type of case
5 which your Honor could appropriately apply here.

6 THE COURT: Without passing upon the quantum of
7 the evidence, in my judgment there is adequate quality
8 to go to the jury.

9 MR. ANOLIK: Very well.

10 THE COURT: Your motion is denied.

11 MR. ANOLIK: I would preserve any other objec-
12 tions that we made during the trial on motion for dis-
13 missal --

14 THE COURT: I don't understand that those
15 are waived. In any event, your preservation of them
16 is noted.

17 Motion denied.

18 MR. JOY: With respect to Patricia McIntyre,
19 I would move for a judgment of acquittal on all counts
20 because she has again not been shown to have joined a
21 conspiracy, certainly to the degree necessary that your
22 Honor could permit a verdict of guilty as to her participa-
23 tion in the conspiracy if there was one. There is no
24 indication that she knew what was in any package that
25 was delivered, so that I would move, with respect to all

pgb

counts, for a judgment of acquittal on those grounds.

Additionally, in particular, Count 2 refers to the passing, the substantive crime of passing --

THE COURT: Your client is not in Count 2.

MR. JOY: Count 3. That refers to the passing of the sample that was passed by Moses Weindling. There has been absolutely no testimony that Ms. McIntyre participated in any way with the passing of that sample. And I think that clearly that count should be dismissed as to her.

MS. COTE: Your Honor, Ms. McIntyre was present with Mr. Weindling when that sample was passed. It was taken from his boot while Ms. McIntyre was sitting at the same table as Mr. Weindling. Ms. McIntyre referred specifically to that very sample that was given to Detective Minichiello in trying to influence Detective Minichiello to believe that the larger package was of high quality.

THE COURT: This is to nose injury testimony you are talking about?

MS. COTE: Yes.

Furthermore, your Honor, Section 2 --

THE COURT: I understand. The motions are denied. I will see you at 1:45.

(Luncheon recess.)

(In open court: jury present.)

MR. JOY: May we approach.

(At the side bar.)

MR. JOY: I'm sorry, your Honor. Maybe I should have done this before the break.

In any event this is a request that since my defendant is going to take the stand, Rule 608(b), it is within your Honor's discretion to permit cross-examination with respect to bad acts, and before deciding whether to put my defendant on the stand since it is within your discretion, I would like to know what bad acts the Government plans to introduce.

MR. ANOLIK: Same here, your Honor. I have the same problem.

MR. JOY: Perhaps we could go into the robing room.

THE COURT: Why do you bring this up at this moment?

MR. BELLER: What do you want to know about? Which particular bad act do you want to know about?

MR. JOY: So we can get a ruling on them.

MR. BELLER: Which ones?

THE COURT: We will go in the robing room.

Ladies and gentlemen, stay in place for a

1 pgb

448

2 few minutes. Excuse us.

3 (In the robing room.)

4 THE COURT: All right. Let's take Mr. Weindling
5 first.

6 Do you propose to cross-examine any prior --

7 MR. ARNOLK: Any prior criminal acts?

8 MS. COTE: We can start with convictions. I
9 ask what --

10 MR. ANOLIK: What convictions does he have?

11 MR. BELLER: What did he tell you.

12 MR. ANOLIK: All I know is that he had one
13 conviction which was reversed. Is that correct? If there
14 is something else --

15 MR. BELLER: Is that all he told you? All he
16 says was one conviction?

17 MR. ANOLIK: In the military.

18 MS. COTE: He was court-martialed twice, con-
19 victed twice, one was reversed.

20 MR. ANOLIK: Which was the one that stood? What
21 was the charge?

22 MS. COTE: Two convictions. One was for
23 possession and distribution of LSD. He received a two-
24 year sentence, dishonorable discharge, loss of moneys, etc.

25 The second conviction was for attempting to

1
2 bribe the chief witnesses against him in the LSD prosecu-
3 tion not to appear. That was a conviction which he also
4 received a three-year sentence, later reduced to two
5 years, dishonorable discharge, etc., which was eventually
6 appealed and reversed on appeal.

7 MR. ANOLIK: It is only the LSD conviction
8 that stood?

9 MR. BELLER: You will have find this informa-
10 tion from your client. You are making the motion. Tell
11 us what you think is improper to cross-examine on. We
12 are not going to tell you the whole case.

13 MR. ANOLIK: I think under the rules we are
14 entitled to know what bad acts the Government has that
15 we have not uncovered.

16 THE COURT: Your client ought to know.

17 MR. ANOLIK: He told me about the LSD. He
18 claimed it was an interrelated case. He said that was
19 reversed. He understood that that was with both cases.

20 MS. COTE: Did he tell you how long he spent
21 in jail?

22 MR. ANOLIK: Quite a bit of time in jail.
23 Those are the only convictions he told me about. Is there
24 anything else besides that?

25 MS. COTE: What other bad acts or arrests has he

1 pqb

2 told you about?

3 THE COURT: Counsel, I don't want to do this.
4 We were supposed to resume at 1:45. I'm not going to
5 get into colloquy. Perhaps I am wrong. This is asking
6 for an anticipatory ruling under Ortiz or such cases.

7 MR. BELLER: On something. We have not heard
8 as to anything in particular. Even that anticipatory ruling
9 is not discretionary with the Court. Having not heard the
10 testimony it is hard to say what is relevant and what is
11 not relevant, particularly where there has not been any
12 request as to any particular bad act.

13 THE COURT: Those are the two matters. Mr.
14 Anolik, what do you wish to move the Court to do, given
15 what you have heard?

16 MR. ANOLIK: In view of the fact that one was
17 sustained, I don't have to make any motion to the Court.
18 He is not going to testify. He told me he thought both
19 of them were thrown out.

20 THE COURT: Mr. Joy, you were the one who
21 summoned this session into being.

22 MR. JOY: I believe my client has not been
23 convicted of anything. She has told me that. I believe
24 that is the information that you have supplied me with.

25 MS. COTE: That's right.

pqb

1
2 MR. JOY: However, I don't know whether the
3 Government has some "bad acts" that they plan to ask
4 her about. While they can't offer extrinsic evidence
5 under 608(b), they are able to ask about specific instances
6 of the conduct for the purpose of attacking or supporting
7 credibility. It seems to me I ought to be informed of
8 what the Government intends, the alternative being that
9 she take the stand at her peril, of your Honor making a
10 ruling that some specific act they have in mind is a bad
11 act or bears on her credibility. It seems to me in
12 fairness if the Government has some acts they claim are
13 bad, that it is not really asking very much to simply
14 tell the Court and have your Honor make a ruling at this
15 point.

16 MR. BELLER: We have told you we know of no
17 convictions. I don't see any reason why we should be
18 obligated to inform you of every line of cross-examination
19 we may conceivably have depending on her testimony. You
20 can ask her and I'm sure she will tell you whatever bad
21 things she has done which might relate to her credibility.

22 MR. JOY: I will give you an example. For
23 example, the fact that she was a Playboy Bunny, do you
24 intend to ask her that?

25 MS. COTE: That is a bad act?

MR. BELLER: It may be relevant or not.

MR. JOY: The only relevancy that it has some kind of salacious overtone. I would object to it, if it were asked, as being irrelevant, but I want to know --

THE COURT: I will not get into this.

MR. JOY: For example, the problem is if I tell the Court instances that I think may or may not be bad acts, then the Government in effect is advised of something they may or may not know. I think it really puts a tremendous burden on the defendant who is going to be cross examined not about anything that took place that has to do with the substance, but with regard to things that may be of an embarrassment or "bad act" nature. It is not putting much of a burden on the Government at this stage --

THE COURT: You are talking about 608(b)?

MR. JOY: Yes.

THE COURT: It does seem to me the prosecution is limited to asking questions of specific acts of conduct for the purpose of attacking credibility if in the discretion of the Court they are probative of truthfulness or untruthfulness.

I trust the Government will be so guided in the cross-examination and I don't think they can go further than that and cause them to reveal what the specific acts

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

453

are, if any.

MR. JOY: The question will be asked, in other words Ms. Cote will say, "Isn't it true that you were--"

THE COURT: "That you lied on the witness stand in a proceeding in 1973?" If she has a good faith basis for it, she could ask it.

MR. JOY: It is not that clear. Then I object, but the question has been asked and the jury is aware of what the question is.

THE COURT: It is perfectly clear.

Let's go.

(In open court.)

THE COURT: Ladies and gentlemen, as you heard this morning, the Government has rests its case.

MR. ANOLIK: Your Honor, at this time the defendant Weindling rests.

MR. JOY: At this time the defendant Patricia McIntyre calls Patricia McIntyre.

P A T R I C I A M c I N T Y R E, a defendant, called as a witness in her own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JOY:

Q How old are you?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

McIntyre-direct

454

A Twenty-two.

Q Where were you born and brought up?

A I was born in McKeesport, Pennsylvania. I was brought up in a small town beside that called Irwin, Pennsylvania.

Q Is that in the Western part of the State?

A It's about a half hour outside of Pittsburgh, yes.

Q Where did you attend school?

A High school?

Q Yes.

A Norwin.

Q Is that in Irwin?

A Yes, it is.

Q How large a family do you come from?

A I come from a family of nine children -- eleven all together.

Q Eleven in the family or eleven all together?

A There is more than eleven in my family as far as cousins, nine children.

Q How many brothers and sisters do you have?

A Nine.

Q Did there come a time when you went to work for Eastern Airlines?

1

2

A Yes.

3

Q When was that?

4

A In August of '76.

5

Q Did you have to go through a training period

6

for that job?

7

A Yes, I did. For six weeks.

8

Q What flight were you on for Eastern?

9

A I was on -- Eastern only flies domestically,

10

so I was on domestic fights. Whatever they scheduled me

11

for.

12

Q Don't they fly to Mexico City and some other

13

places?

14

A Yes. That's considered domestic. Mexico

15

and the Caribbean Islands.

16

Q Did you fly to either Mexico or the Caribbean?

17

A The whole time employed?

18

Q Yes. While you were a stewardess.

19

A Once I flew -- I was scheduled to Acapulco

20

and once to Puerto Rico. The rest of the time was mostly

21

shuttle flights and up and down the East Coast.

22

Q When did you come to New York?

23

A When Eastern Airlines sent me here.

24

Q What year was that?

25

A That was last year in September, September 12, '76

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Where did you live when you first came to New York?

A Well, I moved in immediately with a girl by the name of Pat Thomas.

Q Where was that?

A That was on East 84th Street.

Q Would you tell us who Pat Thomas is?

A She is also a flight attendant for Eastern Airlines.

Q Would you describe what she looks like?

A She is about five foot six, attractive, hazel eyes and she is black.

Q She is of the black race?

A She is a black girl, yes.

Q When did you meet Moses Weindling?

A The second day I was in New York.

Q That was in 1976?

A Yes.

Q Did you ever live with Moses Weindling?

A Yes, I did.

Q For what period of time?

A Until the end of December. For about three months until I could afford a place of my own.

Q When you moved out where did you go?

1
2 A I moved into the apartment I live in now on
3 86th Street.

4 Q Are you living alone?

5 A No, I'm not.

6 Q Who is living with you?

7 A My sister.

8 Q When did she move in with you?

9 A I believe it was late spring.

10 Q When you moved away from Moses Weindling, did
11 you continue to see him?

12 A Yes, I did.

13 Q How many times a week would you see him?

14 A It's hard to say. About two or three times
15 a week.

16 Q Would you describe what your sister, the one
17 that is living with you, looks like?

18 A Yes. She is five foot six, hazel eyes, long
19 blonde hair, nicely built, attractive.

20 Q Did you ever see Moses Weindling use cocaine?

21 A Yes, I have.

22 Q Where was that?

23 A Any time he felt like it.

24 Q Was that in private, in the apartment, or other
25 places as well?

1
2 A Well, in the beginning of my relationship
3 with Moses I don't believe he used cocaine. I really
4 had no knowledge of that.

5 As far -- as it progressed and became more fre-
6 quent, it depends on when you are talking about.

7 Q Just suffice to say you saw him on occasion
8 use cocaine, is that right?

9 A Yes, I did.

10 Q Have you ever snorted cocaine?

11 A I tried it, yes.

12 Q Did you use it as a regular thing?

13 A No.

14 Q I draw your attention to April 27th of this year
15 Were you living with Moses then?

16 A No, I was not.

17 Q But you were still seeing him, is that right?

18 A Yes.

19 Q Would you tell us what you were doing on the
20 evening, early evening, of April 27th of this year?

21 A Evening or the early evening?

22 Q Early evening.

23 A I have a bicycle and it needed air in the tires.

24 Q What were you doing with the bicycle?

25 A I was taking it to 90th Street to a gas station

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pqb

McIntyre-direct

459

to put air in the tires.

Q Where were you coming from?

A I was coming from my home on 86th Street. It is between First and Second Avenue.

Q Where is the gas station?

A The gas station is between First and York on 90th Street, which is one block down and three blocks over or four blocks over.

Q While you were walking your bicycle to the gas station did anything happen?

A Yes. I was called across the street by Moses.

Q Where was that?

A That was, I believe -- 78th Street.

Q Did he come out of some place?

A He came out of the Sixish Bar.

Q What did you do?

A I crossed the street with my bicycle and he asked me to come in for a drink, that some friends of ours were in there.

Q Did you do that?

A Yes, I did.

Q What happened when you got inside?

A I saw Steven, who I had known and then I was introduced to Tony, a man named Tony.

1

pgb

McIntyre-direct

460

2

Q Had you known Steven before?

3

A Yes. We had had drinks before.

4

Q Had you met him through Moses or through some-

5

body else?

6

A Through Moses.

7

Q When you were in The Sixish Bar, what took

8

place?

9

A The first question I was asked when I got there

10

was to pick three numbers.

11

Q Who asked you to do that?

12

A Moses.

13

Q Then what happened?

14

A I asked him why and he said, "Never mind,

15

honey, just pick three numbers".

16

Q Was there a discussion after that?

17

A Yes. I picked three, five and seven. There

18

was some discussion about the numbers, yes, I think. I

19

was talking to Steven.

20

Q Was there any talk about playing the numbers?

21

A I really don't remember.

22

Q Did you hear any talk about drugs?

23

A No.

24

Q Was there any discussion about something

25

happening the next day?

1 A I was invited to have lunch with them at the
2 Grass Restaurant and I was asked if I could make it and I
3 said yes, that I could.

4 Q How long were you in Sixish Restaurant from
5 the time you got in until the time you left?
6

7 A Not very long.

8 Q Approximately.

9 A I came in -- I was there maybe long enough --
10 not even to finish one glass of wine.

11 Q Did you leave with anybody?

12 A I remember Moses helping me out of the restaur-
13 ant with my bicycle.

14 Q Where did you go?

15 A To 90th Street to put air in the tires.

16 Q On April 28th did you meet Moses some place
17 to go to Grass Restaurant?

18 A Yes, I met him at his apartment.

19 Q About what time was that?

20 A About twenty after two. Our appointment was
21 at 2:30. I knew that.

22 Q What was Moses wearing, do you remember?

23 A Yes, he had on a jumpsuit, a blue-jean jumpsuit.
24 MR. JOY: May we have this marked for
25 identification.

(Defendants' Exhibit A was marked for

xxx

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

McIntyre-direct

462

identification.)

MS. COTE: May we approach, your Honor. Very, very briefly.

(At the side bar.)

MS. COTE: I made a request prior to trial when I made full discovery under Rule 16 that any objects, documents, etc., that they intended to be introduced in their case be provided to the Government pursuant to Rule 16 -- reciprocal discovery. This is the first I have seen of this item and it may be the first I have seen of I don't know how many other items.

MR. ANOLIK: Your Honor, this is something that --

MR. BELLER: You didn't offer it.

Here is the rule, your Honor.

MS. COTE: The last part of the letter to Mr. Joy.

MR. BELLER: Anything else?

MR. JOY: The bag, the brown bag.

MS. COTE: The purpose is not to keep this one object out, but to make Mr. Joy comply with the rule with respect to any future objects or documents.

MR. JOY: You want to look at it? I have no objection.

1
2 THE COURT: The question is, what else is
3 there?

4 MR. JOY: The bag maybe. I'm not sure.

5 THE COURT: That is the only thing?

6 MS. COTE: No other documents?

7 MR. JOY: No.

8 THE COURT: Rule 16(d)(2) indicates that
9 the Court has the power even up to the exclusion of the
10 exhibit.

11 Since the Government is satisfied with your
12 disclosure, and that that is all, fine.

13 MR. JOY: I seem to have left the bag over at
14 my office. I wonder if I could impose on one of your law
15 clerks to call my office and ask them to bring it over.

16 THE COURT: Sure.

17 MR. JOY: It is in my office on the top of the
18 bookcase.

19 (In open court.)

20 Q Ms. McIntyre, I show you Defendants' Exhibit A
21 for identification and ask you if you recognize that.

22 A Yes.

23 Q Take a look at it.

24 A Yes, I recognize it as the outfit Moses wore
25 that day on the 28th?

1
2 MR. JOY: I would offer this in evidence
3 at this time.

4 MS. COTE: May I have an opportunity to look
5 at it? Other than that I have no objection.

xx 6 (Defendants' Exhibit A was received in
7 evidence.)

8 MS. COTE: Your Honor, may I have a voir dire
9 on this. I know it is a little late.

10 THE COURT: No, I don't think so. You may
11 cross-examine later.

12 Q How did you get to Grass Restaurant?

13 A We took Moses' car.

14 Q Where did you park, do you know?

15 A Yes. It was across the street and down -- on
16 the southeast corner opposite the restaurant.

17 Q After the car was parked, you went to Grass?

18 A Yes.

19 Q What happened when you went into Grass?

20 A I first -- we didn't see Steven or Tony, so we
21 ordered two drinks at the bar.

22 Q When you say "two drinks", do you mean two
23 consecutive or two concurrent drinks?

24 A As a matter of fact, I had a TAB, and he was
25 drinking scotch and water, and then Steven called out to us

and so before we could actually even start the drinks we sat down and took the drinks with us.

Q Is your sister in court today, Ms. McIntyre?

A Yes, she is.

Q Would you point her out to the jury?

A She is the young blonde seated in the second row.

Q About what time was it that you actually sat down at the table, approximately?

A Approximately twenty-five to 3:00.

Q Did you have lunch?

A Yes, we did.

Q Did you have some drinks?

A I don't drink. Are you referring to myself?

Q I mean the people who were at your table.

A Yes.

Q Who were the people at your table?

A There was Steven who sat beside me; there was Moses who sat across from me; and Tony, or should I refer to him as Detective Minichiello?

Q Tony, whom you later found out was Detective Minichiello?

A Tony, who was Detective Minichiello, who was seated opposite of Steve and next to Moses.

1
2 Q You saw the prior testimony on the board being
3 given by one of the officers stating where he was seated,
4 is that correct?

5 A No, it is not.

6 Q Come down and tell us where you were seated
7 around the table.

8 A I was seated here and Moses was here. Steven
9 was seated beside me and Detective Minichiello was seated
10 beside Moses.

11 Q In other words, Steven, that is the "S" that
12 is marked on the chart, and the "M" indicating Minichiello,
13 it is your testimony that they were reversed?

14 A No. Here it is.

15 Q That is "M" for Moses.

16 A I am confused.

17 Q Tell us where you think everybody was seated.

18 A They have this all wrong.

19 Steven was actually here. I was actually
20 seated here. Moses was opposite me, and Detective Mini-
21 chiello was opposite Steven.

22 Q Why don't we get a marking. Mark the first
23 initials --

24 MR. BELLER: May we make a box on the side?

25 THE COURT: Good idea. That would constitute

1
2 the table.

3 THE WITNESS: This is the table. This is
4 Steven. This is Patty.

5 Q Write the name.

6 A This is Moses and this is Tony.

7 THE COURT: That will be an exhibit.

8 Q The four people at the table had drinks at one
9 time or another?

10 A Yes.

11 Q Was there more than one round of drinks?

12 A Yes, I would say three or four rounds.

13 Q I take it that some of those were alcoholic
14 beverages, were they not?

15 A Two were scotch and water, and one was either
16 vodka and tonic or vodka and tomato juice. I can't
17 remember.

18 Q Did there come a time when you went to the
19 ladies' room?

20 A Could I go back to the last question.

21 Q Did there come a time --

22 THE COURT: She would like to go back to the
23 last question.

24 A The three drinks. The three drinks -- I had
25 TAB, so I was not drinking. The other drink that I was

in question in my mind was vodka and tomato juice.

Q Who had that?

A Tony. Steven and Moses were drinking scotch and water because that was Moses' drink and Moses wanted Steven to have the same. That's why I remember.

Q Did there come a time when you went to the ladies' room?

A Yes.

Q When approximately was that, do you know?

A Well, I know it was after the meal was finished. I would say approximately half an hour, maybe more went by.

Q What time of day?

A Around four o'clock, 4:10.

Q Did you take anything with you when you went to the ladies' room?

A Just my pocketbook.

Q I believe this has already been marked as a Government exhibit, Government Exhibit 5 for identification.

I show you Government Exhibit 5 for identification and I ask you if you recognize that.

A This is my pocketbook that day.

Q Did you have it with you that day?

A Yes.

1
2 MR. JOY: I would offer this in evidence
3 at this time.

4 MS. COTE: No objection.

5 THE COURT: This will be Defendant's Exhibit
6 B in evidence.

xxx 7 (Defendants' Exhibit B was received in
8 evidence.)

9 Q You went to the ladies' room with your purse,
10 is that right, Defendants' Exhibit B in evidence?

11 A Yes.

12 Q Where was the ladies' room located?

13 A Directly at the bottom of the steps.

14 Q Those are the steps on the chart in the upper
15 right-hand corner, is that right?

16 A That's right.

17 Q When you arrived at the ladies' room was there
18 anybody in the ladies' room?

19 A Yes. There were a few other women in there.

20 Q Do you know how many there were all together in
21 the ladies' room when you arrived?

22 A I believe there was one in the cubicle already,
23 and there was another woman waiting.

24 Q Did you know any of the women in the ladies'
25 room?

1

pgb

McIntyre-direct

470

2

A No.

3

Q Did a brunette or dark-haired woman enter after

4

you?

5

A I really don't remember. She could have.

6

Q You saw or heard Ms. Jeronimo testify this

7

morning. Did you see her come in?

8

A She could have. I really don't remember.

9

Q Did you have a conversation with anybody in the

10

ladies' room?

11

A It's possible. I really don't remember.

12

Q There came a time when you left the ladies'

13

room, is that right?

14

A That's right.

15

Q How long had you been there, do you know?

16

A Not very long. I only had to wait -- no. I

17

do remember. The other woman pushed her way through and

18

took my turn. It might have been Ms. Jeronimo. I

19

don't know.

20

Q What do you mean by "your turn"? You mean

21

in the cubicle or whatever?

22

A Yes. There is only one cubicle.

23

Q In addition to using the cubicle, did you

24

do anything else in the ladies' room?

25

A I really don't remember, but it's possible.

Generally after a meal I generally put on lipstick.

Q I take it your lipstick is in your bag, is that right?

A That's where it would be, yes.

When you came up from the ladies' room, what did you do at that point?

A I came back up and sat back down. I put my purse on the corner of the chair and sat down.

Q Would you show the jury, using Defendants' Exhibit A.

A Well, I carry it like this and then I sat down and I did this with it and put it on the corner of the chair.

Q Then what happened?

A Then Moses asked me for my purse.

Q Why did he ask you for your purse?

MS. COTE: Objection, your Honor.

THE COURT: Overruled.

A There was the check on the table. It was beside him. It was between -- it was beside him. It was between me and him. I assume he wanted to pay the bill.

Q Why would he ask for your purse if he wanted to pay the bill?

MS. COTE: Objection, your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pqb

McIntyre-direct

472

THE COURT: Continue.

A Because I had his money.

Q You had his money?

A Yes.

Q When did he give you the money?

A That morning.

Q Were you carrying anything else for Mr. Weindling?

A I can't remember, but I might have been carrying either a brush or a comb. I can't remember.

Q Do you know why Mr. Weindling didn't carry those things himself?

A Well, yes, because he didn't have pockets.

MS. COTE: Objection.

THE COURT: If this is embodied in the conversation I will permit it, otherwise I will sustain the objection.

Q Did Moses ever tell you why he gave you the objects to carry?

A Yes. He asked me to. Moses is a bit vain, and he doesn't like to carry a lot of bulky things on him. It's not unusual for him --

Q Has he done it before?

A Yes.

Q When you go out he has done it before?



things, small talk. I don't remember.

Q What specific things do you remember?

A I know that that day I was very concerned about the cat and she was in the hospital and that I had to call the hospital before 4:30.

Q Did you talk about this with the people at the table?

A Oh, yes. We were talking about how it happened and what happened and, you know, she fell and broke her leg and we went into how this happened.

We also talked about our trip to Pittsburgh. We went to visit my family.

I told them about my brothers and sisters and what they did, what animals we had.

The last I had seen Steven also I told him I was leaving for Florida and I told him about that trip which was months and months ago, and Puerto Rico. We talked about Puerto Rico.

Q Going back to when you came up from the ladies' room, you heard the witness this morning say she heard something like "Oh, shit", at the top of the stairs, or something like that. Do you recall saying that?

A I don't recall saying that, because I generally don't swear, but, it's possible because I do know that

1 I had to make that phone call before 4:30, and it was getting
2 late in the afternoon and the telephone number I needed
3 to call was on the table on a card, that I had to call,
4 the veterinary.
5

6 Q Whom did you have to call?

7 A I had to call the Animal Medical Center.

8 Q Why?

9 A Because the cat was supposed to be released
10 that day and I had to find out how her surgery went
11 and whether she could be released.

12 Q This is your cat?

13 A It's our cat, Moses and my cat. We lived to-
14 gether and we had a cat.

15 Q Did there come a time when you got your bag
16 back?

17 A Yes, almost immediately, because I knew that
18 I had to make the call, and I got the bag back from Moses
19 right away, picked up the card, and then I went back down-
20 stairs to make the call.

21 Q At the table did you ever mention anything about
22 trying some cocaine the night before?

23 A No, never. I know I didn't.

24 Q Did you point out some discoloration of your
25 nose?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

McIntyre-direct

476

A No. I had no discoloration of my nose.

Q You didn't say that to Tony?

A I didn't say that. My nose was not discolored. I didn't see any reason for him even saying that. I had no conversation about drugs at that time.

Q Did you ever discuss with Mr. Weindling any plans to distribute or sell cocaine?

A No. Moses did not sell cocaine.

Q Did you see any cocaine being passed at The Sixish Bar?

A No, there was no cocaine passed in front of me ever that day or the next day.

Q Did you see any cocaine passed in The Grass Restaurant?

A No, I did not. I honestly did not.

Q Did you see Pat Thomas in the restaurant, in The Grass Restaurant on the 28th?

A I didn't see her. If I had seen her I would have recognized and said hello to her. I'm not saying she was not there. I'm saying that I did not see her, no.

Q Did you see anybody else in the Grass Restaurant that you knew?

A No. I didn't see anybody that I knew aside from Steven and Tony.

Q Did you ever see three and a half ounces of cocaine in The Grass Restaurant?

A No, never.

Q Did you see anything that looked like three and a half ounces of cocaine?

A No.

MR. JOY: I have no further questions.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q Ms. McIntyre, you know me, do you not?

A Yes, I do.

Q You know I represent Moses Weindling, is that correct?

A That's correct.

Q On occasion we have spoken together, isn't that true?

A That's true.

Q Let me ask you: While it's still fresh in my mind you mentioned the fact that you had to call about a cat, do you remember that?

A Yes.

MR. ANOLIK: May I have something marked for identification, your Honor.

(Defendants' Exhibit C was marked for

xxx 25

identification.)

Q I show you C for identification and ask you if you recognize this picture.

A Yes, that's her.

Q What does that depict?

MS. COTE: Objection.

MR. ANOLIK: May I show it to your Honor?

THE COURT: Yes.

(Pause.)

(At the side bar.)

THE COURT: On what theory are you offering a picture of a cat?

MR. ANOLIK: I want to show she is not making it up.

THE COURT: How does this prove she is not making up the story about telephoning a hospital about a cat?

MR. ANOLIK: The right leg is somewhat atrophied as compared to the left leg. That picture was taken shortly after the cat had broken its leg and the cast was taken off.

THE COURT: How does that go to support your contention, I gather, that she was making a phone call to the cat hospital?

MR. ANOLIK: It tends to corroborate her

1 testimony. That's the reason.

2 THE COURT: I take it nobody disputes this
3 lady had a cat. The question is whether she had a call to
4 make to the cat hospital on that day.

5 MS. COTE: I object on relevancy.

6 The second objection is Rule 16, and the request
7 was served on Mr. Anolik at the time the Government turned
8 over its documents in this case.

9 MR. ANOLIK: We did not anticipate this ques-
10 tion. My client informed me he had a picture of a cat.

11 THE COURT: I sustain the objection. There
12 is no connection with the issues of this case, certainly
13 at this point.

14 (In open court.)

15 Q Pat, would you tell the Court and jury whether
16 or not at any time you were present or overheard any dis-
17 cussion whatsoever wherein Moses Weindling offered any
18 cocaine for sale to anybody?

19 A No, I did not.

20 Q You said that there did come a time after you
21 had met Mr. Weindling that you learned that he did use
22 cocaine, is that correct?

23 A I didn't know it in the beginning, but after
24 a while yes, I found out.
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

McIntyre-cross

480

Q Had you ever tried to do anything about that?

A Yes, I did.

MS. COTE: Objection, your Honor.

THE COURT: The objection is sustained.

Q Did you ever go anywhere with Moses Weindling
with reference to his habit?

MS. COTE: Objection.

A Yes.

THE COURT: The objection is sustained.

MS. COTE: Would you instruct the witness not
to answer until --

THE COURT: Any answer that may have been
received is stricken.

Q Did you ever have any conversation with Moses
Weindling concerning his cocaine habit?

MS. COTE: Objection.

THE COURT: I will sustain that.

Q Do you know, just yes or no, whether or not
Moses Weindling ever went to a psychiatrist in connection
with his habit?

A Yes.

MS. COTE: Objection.

THE COURT: I will sustain that objection.

Q Did you ever have a conversation concerning

1 cocaine with Moses Weindling?

2 A Yes.

3 Q What was that conversation?

4 A I tried to get him to quit it, to stop.

5 Q Try to remember generally what you said to him
6 and what he said to you.

7 MS. COTE: I object, your Honor.

8 THE COURT: I'm going to sustain that objection,
9 Mr. Anolik.

10 MR. ANOLIK: I'm asking about cocaine in gener-
11 al.

12 THE COURT: You are asking her about a con-
13 versation that is within the rubric of the last series of
14 objections and without any fixing of the time, so we don't
15 know when it is, to see whether it is relevant.

16 Q You said you first met Moses Weindling I believe
17 in 1976, is that correct?

18 A Yes, I met him in September.

19 Q When was it for the first time you began to
20 realize he was a user of cocaine?

21 A Not until about late November, December.

22 Q Some time between December of 1976 and April
23 of 1977, did you have a conversation concerning cocaine with
24 Moses Weindling?
25

MS. COTE: Objection, your Honor.

THE COURT: I sustain the objection.

Q Can you tell me whether or not Moses Weindling, if you know, ever carried cocaine with him?

A I believe he did at times. I believe he carried what he called his personal stash.

Q Did he use this every once in a while?

A Yes, he did.

Q You were asked a question, do you remember, about Pat Thomas. Do you remember that?

A I was asked a question about Pat Thomas?

Q Yes, by your lawyer.

A Yes, I remember that.

Q You would have recognized Pat Thomas in April of 1977 if you had seen her, would you have not?

A Oh, yes.

Q You had lived with her, isn't that true?

A She was my roommate.

Q Did you see her in The Grass Restaurant any place, be it downstairs, upstairs, in front or in back?

A No, I did not.

Q We are talking about April 28th, right?

A That's right.

Q You heard this Ms. Jeronimo testify, Pat,

1 concerning what she said occurred in the ladies' room,
2 do you remember that?

3
4 A I heard that.

5 Q Did you know Ms. Jeronimo when she appeared here?

6 A No.

7 Q Did you recognize her at all?

8 A No.

9 Q Do you sometimes speak to women in the ladies'
10 room if you are waiting for a booth?

11 A Quite frequently, yes.

12 Q You are trained, are you not, in connection with
13 your being a flight attendant to be congenial to people,
14 is that right?

15 A That's right.

16 Q You frequently talk to passengers and whatnot?

17 A It's part of my job, yes.

18 Q So would it be possible that you did speak to
19 someone if there was another woman waiting?

20 A I would say that Ms. Jeronimo is probably
21 right. I probably did have a conversation with someone in
22 the ladies' room.

23 Q Was it a conversation concerning drugs?

24 MS. COTE: Objection, your Honor. The leading
25 nature of all these questions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgh

McIntyre-cross

484

THE COURT: Overruled.

A No, it was not.

Q Do you have any independent recoⁿtion what
the conversation was about altogether?

A I really wish I did, but I really can't
remember what I said to that girl.

Q Do you remember when you heard the testimony
of the officer who testified in this case, Officer Hansen
said that he arrested you when you were making a telephone
call. Do you remember that?

A Yes.

Q Do you remember being arrested by Officer Hansen?

A Yes.

Q Do you know about how long after you got to
the phone you were arrested?

A Almost immediately.

Q Did you go directly to the phone?

A Yes, I did.

Q You didn't go to the ladies' room first, did you?

A Not at all, no.

Q So you walked down the stairs, went to the
telephone, right?

A Yes.

Q Let's assume, Pat, that -- come to the board

1
2 for a second.

3 Let's assume that this area is the downstairs
4 by the ladies' room. Show me about where the ladies' room
5 is and -- first, where the staircase --

6 A This is the staircase right here. The stair-
7 case comes up this way. This part of it is all open.
8 Most of it is all open.

9 Q What do you see through the opening?

10 A It's open to the first floor, the stairs go down
11 to the basement and there is like a landing right there.

12 The ladies' room is right about here.

13 Q Put an "L" there.

14 A Yes.

15 Q Put an "S" here for stairs, if you don't mind.

16 A All right.

17 Q Whereabouts would the phone booth have been?

18 A The phone booths are right over here.

19 Q Like almost under the staircase?

20 A Almost under it, but not completely under it.
21 Just almost under it.

22 Q Put "T" for telephone.

23 A All right.

24 Q So when you went down the stairs, point out to the
25 jury how you went down the stairs and how you approached the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

McIntyre-cross

486

phone when you went to use the phone.

A I went down the stairs and I came around this way and used the telephone.

MR. ANOLIK: May that be marked a part of the exhibit, your Honor.

THE COURT: Yes.

Q So when you went down to use the phone, how long do you think it actually took you to get down there, Pat, from the time you left the table?

A A few seconds. I don't know.

Q You used a dime, I take it?

A I guess it was a dime.

Q You used a coin, be it a dime or two nickels?

A Yes.

Q Had you actually dialed the number before you were arrested?

A I don't remember whether I had or not. But I do remember that the call didn't get through.

Q Do you remember Officer Hansen said "Pick up your money" as he testified?

A Yes.

Q Do you remember that?

A He said that.

Q Pat, did Officer Hansen tell you why you were

being arrested?

A No.

Q Did you have any idea at all why you were being arrested?

A No.

Q When was it for the first time that anybody told you why you were being arrested?

A I really don't think anybody told me why I was being arrested.

Q Have you ever been arrested before, Pat?

A Never.

MR. ANOLIK: I have no further questions.

CROSS-EXAMINATION

BY MS. COTE:

Q Ms. McIntyre, just to make the record straight so we all understand what there is no disagreement about, you admit being at Sixish --

MR. ANOLIK: I object to the form.

THE COURT: Change it.

Q You admit being at Sixish Restaurant on the 27th of April?

A Yes.

Q And meeting Moses Weindling there, and also Steven and Tony?

1
2 MR. JOY: I object to the characterization
3 "meeting" as if it was prearranged.

4 A I saw Moses, as I said before, outside the
5 restaurant and I didn't meet Tony until I was inside the
6 restaurant and I saw Steven also.

7 Q At that time you knew who Steven was, right?

8 A Yes, I did.

9 Q Can you give us his full name, please?

10 A Steven Crodder.

11 Q When had you met Steven Crodder?

12 A I met Steven back in November approximately,
13 and I remember it was right before I had gone to Florida.

14 Q That same afternoon at The Sixish Restaurant
15 do you remember giving a number, 357, to Mr. Weindling?

16 A Yes, off the top of my head. I thought of
17 three odd numbers.

18 Q You said there was some conversation about that
19 number.

20 A Yes, there was.

21 Q Was that conversation with Mr. Weindling?

22 A Was it a conversation with Mr. Weindling with
23 who?

24 Q Did you and Mr. Weindling have a conversation
25 about the number 357?

1 A Just that I had asked him why he wanted a
2
3 number.

4 Q What did he say to you?

5 A "Never mind, honey, just pick a number".

6 Q Isn't it a fact, Ms. McIntyre, that you and
7 Mr. Weindling at that point laughed at the joke and
8 when people asked what you were laughing at --

9 A What joke?

10 Q The joke you picked the number 357, and that
11 when people --

12 MR. ANOLIK: I object. Assuming a state of
13 facts not in evidence.

14 THE COURT: Overruled.

15 Q And when people asked what the joke was that
16 Mr. Weindling said she carries the gun in the family?

17 A I really don't know what that means.

18 Q Have you heard of a .357 magnum, Ms. McIntyre?

19 A My brother is a State policeman. He talks
20 about guns. I have heard of all kinds of guns.

21 Q You have heard of a .357 magnum?

22 A I believe I have.

23 Q On the 28th, the following day, you admit being
24 at Grass Restaurant, right?

25 A The 28th, yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q You arrived at Grass Restaurant with Mr. Weindling, correct?

A Yes.

Q In fact you were driven there in Mr. Weindling's car?

A Yes.

Q That was because you joined Mr. Weindling at his apartment just prior to going there?

A Yes.

Q Where did Mr. Weindling live then?

A on 346 East 89th Street.

Q 346 East 89th. Where is Grass Restaurant located?

A I believe it's down in the Seventies.

Q Do you know where?

A 75th Street, it says there.

Q At Grass Restaurant you sat down at a table with Tony and with Steven, right?

A Yes.

Q You said the officers had this all wrong, if I remember, the precise word you used on direct examination

A Yes.

Q They had you at the right table, didn't they?

A Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pqb

McIntyre-cross

491

Q They had you in the right restaurant, didn't they?

A Yes.

Q They had you there on the right date, didn't they?

A I was referring to where we were seated.

Q They had you on the side of the table with Steven, right, on that same side of the table?

A I was on that side but I was not in the seat.

Q In fact, Detective DeRosa when he pointed out this exhibit as being one similar to the one he had taken from you that day, he was correct about that, right?

A I admit that is my purse.

Q You were there for approximately two hours, right, while you had lunch?

A About that.

Q Then there came a time when you went downstairs, correct?

A Yes.

Q Mr. Anolik said he had talked to you prior to your testifying today, right?

A That's right.

Q I imagine that Mr. Joy over the past few days has also talked to you about your testifying today, is that

correct?

A Certainly.

Q During any of those conversations with Mr. Joy or Mr. Anolik prior to the time you saw Ms. Jeronimo take the stand today, had you told either of these gentlemen that --

MR. JOY: I object to anything she said to me as under attorney-client privilege.

THE COURT: Let's take our mid-afternoon recess ladies and gentlemen.

(Recess.)

THE COURT: Mr. Joy, attorney-client privilege goes to matters that are confidential communications if the witness has testified about a particular fact matter and at this point she is a witness.

MR. JOY: That is correct.

THE COURT: Why isn't it appropriate to ask whether she has ever talked about that particular matter that she has now testified to to anybody including her lawyer and to get a yes or no answer?

MR. JOY: She was asked whether she discussed the case with her attorney and she said yes, which I think is all right. When the Government tries to go into what the communications between her and me were, in a lawyer-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

McIntyre-cross

493

client relationship --

THE COURT: Maybe the question is overly broad. Suppose Ms. Cote said, "Did you tell Mr. Joy about this incident in the washroom you have just been testifying to?"

Any problem with that?

MR. JOY: I think the problem is going to come up that if there is not an objection as to what the attorney-client privilege is with a broad question it may be held to be waived with respect to a specific question. I think that communications, preparation for trial between an attorney and client are privileged and should not be inquired into by the Government.

THE COURT: It certainly doesn't seem to me that just because a person is a defendant that the Government is foreclosed from asking whether something they suspect is a recent subject of retention of the mind as to whether they have ever discussed that subject with anybody before --

MR. JOY: I think she covered that when she asked whether she had discussed the case with me. I think it's a proper question which is asked routinely. I have yet to have an instance where the Government is permitted to go into detailed communication between a lawyer and the client.

MS. COTE: Excuse me. I am willing to withdraw the question I asked and rephrase it to asking Ms. McIntyre whether she ever had a conversation with anyone before seeing Ms. Jeronimo on the stand.

THE COURT: About Ms. Jeronimo in the basement?

MS. COTE: About the brunette, the conversation in the bathroom, etc.

THE COURT: I think if you phrase it in that fashion, it is utterly unobjectionable.

MR. JOY: If she had a discussion with anybody?

THE COURT: Yes.

MR. ANOLIK: That would be all right.

THE COURT: We will take our recess. Take seven, eight minutes.

(Recess.)

(In open court; jury present.)

Q Ms. McIntyre, you heard surveillance witnesses testify during the course of this trial that you were seen at Sixish Restaurant on the 27th, is that correct?

A Yes.

Q You told the jury today that you were at Sixish Restaurant on the 27th, correct?

A Yes.

Q You heard numerous agents besides Detective

1 Minichiello testify to the fact that you were at Grass
2 Restaurant on the 28th, didn't you?

3
4 A Yes.

5 Q And you testified that you were at Grass
6 Restaurant on the 28th, right?

7 A Yes.

8 Q You heard Ms. Jeronimo testify this morning
9 about a conversation you had in the ladies' room while at
10 Grass Restaurant, right?

11 A Yes. I heard her say that.

12 Q You testified today on the stand that you
13 in fact might have had a conversation with a brunette in the
14 Grass Restaurant ladies' room on the 28th, right?

15 A I said that I might have had a conversation
16 but I didn't say that the person was brunette.

17 Q Tell me in as much detail as you can what
18 exactly occurred when you went into the ladies' room on
19 the 28th.

20 A Okay. I went in and there was someone already
21 using the facility there, so I had to wait. I believe
22 there was another person in the ladies' room. It's possible
23 that we had a conversation.

24 Q There is one --

25 MR. ANOLIK: She has not finished. She said she

1 would tell me everything that happened there.

2 THE COURT: Proceed.

3 Q I'm a little confused by what you say.
4 Are you having a conversation with the person you said was
5 using the facility or is there a third person you are
6 having the conversation with?
7

8 A Third person? No. I wasn't having a conver-
9 sation with the person using the facility because that person
10 was in the cubicle.

11 As far as I can remember there was maybe two,
12 maybe one other person in there, and I do recall a woman
13 pushing her way through ahead of me.

14 Q I'm very confused by this. Can you tell us --
15 MR. ANOLIK: Objection as to what she is
16 confused about.

17 Q Take this from the point you entered the ladies'
18 room. What did you see and who was there?

19 A I saw the feet of a person in the cubicle and
20 I saw possibly two women or one woman; I don't remember.

21 Q Did you have a conversation at this point?

22 MR. ANOLIK: I object. She said she might have
23 had.

24 THE COURT: Answer it.

25 A I can't remember. I waited.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

McIntyre-cross

497

Q What happened next?

A Next after I waited? The other woman pushed her way ahead of the rest of us.

Q Who was that woman who pushed her way ahead?

A It's possible it was Ms. Jeronimo. It's possible. I can't remember.

Q There was still someone in the cubicle or was the cubicle free?

A I don't remember. I don't remember.

Q Before you heard Ms. Jeronimo testify today did you tell anyone about that trip to the ladies' room and the possibility that you had a conversation with someone down there?

A No. The trip to the ladies' room was mentioned. The fact that I went to the ladies' room after lunch.

Q Who had you told that to?

A My attorney.

Q When?

A Many times I told him I went to the ladies' room and what happened that day.

Q Ms. McIntyre, you were wearing an off white jumpsuit that day?

A Yes, I was.

Q You had gold earrings with small white stones in

1
2 them?

3 A To tell you the truth I don't have any earrings
4 like that. I have a lot of different kinds of gold
5 earrings, but none with small white stones.

6 Q Were you wearing gold earrings that day?

7 A That's all I ever wear are gold earrings.

8 Q Were they filled in or were they just a circular
9 ring?

10 A I don't remember which ones I had on.

11 Q Would you take us through the events of that
12 day as carefully as you can, please?

13 MR. ANOLIK: Beginning when? I want to know
14 when she woke up in the morning?

15 Q From the time you got up in the morning.

16 A I knew that we were invited to lunch at 2:30,
17 The Grass Restaurant, and I knew that I was meeting Moses
18 back at his apartment that afternoon.

19 I knew he had to go to college first and that he
20 would be out at two, and that I could meet him some time
21 after that.

22 I went to his apartment and I rang the buzzer
23 and the intercom. I don't think he was ready. I
24 don't remember if he wanted to change or whether he wanted
25 to go right away. I don't know how long I was there,

1 but I know that I did go up the steps and I know that as
2 we left we checked the mailbox.

3
4 Q Did you go into his apartment?

5 A Yes.

6 MR. ANOLIK: She is not letting her answer.

7 THE COURT: This is just for a clarification.
8 We are going through the day.

9 Overruled.

10 MR. ANOLIK: I missed something.

11 THE COURT: You can have it read back.

12 MR. ANOLIK: I will ask on redirect.

13 Q The point I wanted you to go back in detail, you
14 said you went up the stairs and then you said you were at
15 the mailbox. After you went up the stairs what did you do?

16 A To me it was just another day. I had seen Moses
17 so many times before I really don't remember.

18 Q Did you go into his apartment that day before
19 going to the restaurant?

20 A I believe I did, yes.

21 Q And how long were you in his apartment?

22 A Not very long. It could not have been very
23 long because we were only about five minutes late for lunch.
24 He got out of college at two. Then he had to take maybe
25 fifteen minutes to get home. So it was just a matter of a

2 few minutes.

3 Q What did you do in his apartment?

4 A Nothing that I can remember. I think he asked
5 me, I think, to carry a brush or a comb and the money.

6 Q How much money was this?

7 A I don't remember.

8 Q Can you describe what he gave you?

9 A I think it was his wallet. I am not sure.
10 I can't remember right now whether it was his wallet or
11 a money clip. I don't remember.

12 Q So you never saw the money itself?

13 A I can't remember.

14 Q You put that money in a clip or in a billfold
15 in your purse?

16 A All right. If the money was in a billfold I
17 would have put the billfold and the brush or comb or what-
18 ever in my purse, yes. If it was in a money clip I would
19 have seen -- no, I would not have seen how much it was.
20 Yes, I would put it in my purse.

21 Q Describe what happened after you took Moses
22 Weindling's money?

23 A I think you we checked the mailbox and then got
24 in the Triumph and rode down to Grass Restaurant.

25 Q There came a point in the afternoon when after

1 lunch you went to the bathroom. After you left the bathroom
2 you were ascending the stairs and you remembered that you
3 had forgotten to call the cat hospital, right?
4

5 A Wait a minute. It's all too much for me to
6 think about. Repeat the question.

7 (Question read.)

8 A That's correct.

9 Q So you returned to your table?

10 A That's correct.

11 Q It was at your table that you had left the
12 number for the cat hospital laid out on the tablecloth?

13 A That's right.

14 Q Did you at that point take the number for the
15 cat hospital and go and make a phone call?

16 A I had until four-thirty to call. I knew that.
17 On the little card it said "ONS", which is the surgery
18 department, "4:30."

19 I believe I sat down -- I didn't pick up the
20 card. I left the card when I sat down because I don't
21 think -- it was not four-thirty at that time, no.

22 Q At this point Mr. Weindling asked you for your
23 purse?

24 A Yes.

25 Q You knew it was to pay the bill?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pqb

McIntyre-cross

502

A Yes.

Q Yet you didn't hand him his billfold or money clip. You handed him your purse?

A Yes.

Q He took your purse?

A Yes.

Q You saw him open your purse?

A Yes.

Q And you saw him take either his billfold or money clip out of your purse?

A No. I don't recall.

Q Did you see him pay the bill?

A I think at that point I had taken the card and, I don't know, I might have asked Steven for a dime.

Q So you went with the card and the dime downstairs to the phone?

A That's right.

Q Moses Weindling had your purse and paid the bill?

A No. He gave me my purse back.

Q So Moses Weindling had not paid the bill yet and still had his money?

A I don't know if he had to pay the bill yet or taken his money at that point. I was very concerned

1 pqb
2 about calling about my cat.

3 Q You are sure you don't know how much money he
4 had?

5 A No, I really don't.

6 Q You don't know how much money he had with him
7 that day at all?

8 A No.

9 Q No way you can remember?

10 A No.

11 MR. JOY: That has been asked and answered.

12 A I don't remember.

13 Q It was at the point where you went downstairs
14 with your purse that you were arrested?

15 A That's right. At the telephone.

16 Q Mr. Weindling had an attache case with him that
17 day, didn't he?

18 A Yes.

19 Q Ms. McIntyre, you told us that you graduated
20 from high school, from a high school in Pennsylvania, right?

21 A No, I graduated from a high school in Florida
22 when I graduated on my graduation year. It was in Florida.
23 My high school and grade school and secondary school was
24 in Irwin, Pennsylvania, yes.

25 Q You left Pennsylvania in what year then?

A I believe it was '73.

Q In that year you went to Florida to finish high school?

A Yes.

Q So you arrived in Florida also in '73?

A Yes.

Q And you finished high school in what year?

A '74.

Q You told us next that you arrived in New York in the fall of 1976?

A Yes.

Q You didn't really tell us what happened in between. Would you please tell the jury what you did during the intervening years?

MR. JOY: I don't know that this is relevant to this case or this inquiry.

(At the side bar.)

THE COURT: What do you expect her to answer?

MS. COTE: Your Honor, I think this area has been opened up on direct examination. The Government would have a right to establish what kind of person Ms. McIntyre was anyway, but on direct examination counsel elicited such statements from her as "I don't swear", "I don't drink". She had an extremely good memory as to what

1
2 everyone was drinking, and counsel is constantly referring
3 to her stewardess training as the reason she would be
4 personable and remember drinks, etc. I think that is
5 very misleading too.

6 MR. JOY: That was on cross.

7 MS. COTE: The first matter was brought out on
8 direc'.

9 MR. BELLER: We have a right to establish her
10 employment. You asked questions about "What do you
11 do for a living?" We have a right to know what she did
12 for a living.

13 MR. JOY: If you want to ask her how --

14 MR. BELLER: She worked for the Playboy Club.
15 We want to establish she is an itinerant person. She
16 comes to New York and a day later goes to live with this
17 person. I think her general lifestyle, what she has been
18 doing for the last couple of years, is relevant to that
19 question. The day after she comes to New York she ends
20 up living with a guy and she knows nothing about him. The
21 jury ought to know exactly, since the issue is what is
22 going on in her mind -- they ought to know what kind of
23 person she is.

24 MR. JOY: This is what I was driving at when
25 I asked the 608 question. The Government is attempting to

1 blacken her character pointing out she was a Playboy
2 Bunny, she lived in Florida, that she was married and
3 divorced or separated, and I think this is nothing what-
4 ever other than just a character assassination. This has
5 nothing to do with her truthfulness or veracity. It's
6 an effort by the Government to try to blacken her
7 character.
8

9 THE COURT: I am troubled by this: If the im-
10 pression is created, which I can see that it might have been,
11 that this is a dewy-eyed high school girl from Irwin,
12 Pennsylvania that has come to New York and doesn't drink
13 or smoke or swear, whereas others have testified that she
14 in fact does at least one of those things -- I'm not sure
15 about drink, but the swearing was testified to by two
16 different people -- it does seem to me that on this
17 record there is certainly a basis for the Government to
18 establish some of these things are not quite as they have
19 been painted to be.

20 MR. ANDLIK: How does the fact that she is
21 a Playboy Bunny indicate whether she drinks or smokes or
22 swears? Does it mean that Playboy Bunnies drink or smoke
23 or swear?

24 MR. JOY: Or that she is separated or divorced.
25 Is that relevant at all to this inquiry?

1
2 MR. BELLER: The jury has a right to know
3 about her particular background generally, as to her
4 credibility, and particularly since you introduced the
5 question of her swearing.

6 MR. JOY: I did not.

7 MR. BELLER: In your examination she said "I
8 don't usually use language like that", or "I don't swear".
9 Generally a jury has a right to know about her background.

10 She supposedly works for Eastern Airlines, but
11 always seems to be in New York and available on two con-
12 secutive days to Moses Weindling. We want to ask what she ha
13 done throughout her life. You brought up the fact
14 she is one of eleven or nine -- you went back over the
15 period in Pennsylvania. The jury has a right to have
16 that information filled in and not to have a four-year
17 gap, just to have an impression of this woman.

18 MR. JOY: I think the Government has
19 intended this all along, which is why they refused to give
20 the statement in the beginning to ask about the Playboy
21 Bunny, about the fact what she did in Florida, and I think
22 it is just an effort to completely blacken her testimony.

23 MR. ANOLIK: They are trying to sandbag her.

24 MR. JOY: It is not fair.

25 THE COURT: We will put the jury in recess for

five minutes.

(In open court.)

THE COURT: Ladies and gentlemen, we will recess for five minutes.

(Jury leaves the courtroom.)

THE COURT: Given what I consider to be an arguable aura created here by counsel in examining Ms. McIntyre which, if I can characterize it, has the aura the defendant argues for, it is arguable of a rather dewy-eyed high school graduate from Irwin, Pennsylvania, that comes to New York and falls into evil hands, who swears infrequently and never drinks, and the Government having proposed to prove that on graduation from high school she was married and then divorced and later served as a Playboy Bunny in a Playboy Club, I'm going to exclude the marriage and divorce in the view that in today's current attitude in that area I don't see that that bears upon the issues.

However, as to the jury assessing whether one is knowledgeable or not knowledgeable in these situations and painting a more complete picture of the witness, I'm going to permit inquiry as to employment by the Playboy Club.

THE WITNESS: Does that mean I can't mention

1 that I was married?

2 THE COURT: That means that I am not permitting
3 the Government to ask you about it.
4

5 If you and your lawyer wish to bring it out
6 on your own you may do that. The Government may not do
7 that. Your lawyer has objected to them asking either of
8 those things and I am ruling as to one.

9 (In open court; jury present.)

10 BY MS. COTE:

11 Q Ms. McIntyre, I believe we were at the point
12 of asking you to fill in what happened during those years
13 between the time you graduated from high school in Florida
14 and the time you came to New York and the fall of 1976.

15 MR. JOY: I object.

16 THE COURT: I will sustain an objection
17 to the question in the form in which it is put.

18 Q Have you had any other jobs besides your job
19 as an airline stewardess?

20 A Yes, I have..

21 Q Could you please tell us what those jobs were
22 and when you had those jobs?

23 MR. JOY: Can we ask for a leading question here
24 with respect to her employment as a Playboy Bunny?

25 THE COURT: Overruled.

1
2 Q You can begin from the first job after high
3 school.

4 MR. JOY: That's not the Court's ruling, as
5 I understand it.

6 THE COURT: Come up again.

7 (At the side bar.)

8 THE COURT: I really don't understand the
9 objection. Unless we have two or three Playboy Clubs --
10 you can be in a position to object if she was a secretary
11 or worked as a beautician or worked as a waitress.

12 MR. JOY: She worked as a dancer in Castaways
13 Hotel in Florida for a short period of time.

14 THE COURT: This would fit under my Playboy
15 ruling and I would permit it on the theory you presented
16 her as a dewy-eyed high school --

17 MR. JOY: I thought we were compromising
18 in terms of the Playboy Bunny Club.

19 THE COURT: My ruling was that given today's
20 frequency of divorce and the social attitude, I didn't feel
21 that getting into the marriage or divorce bore upon any
22 issues. But the knowledgeability of the narcotics scene
23 and swearing and drinking, all of these things would have
24 a bearing.

25 MR. JOY: Very well.

(In open court.)

BY MS. COTE:

Q Ms. McIntyre, beginning with the first job you held after high school would you please tell the jury what jobs you have held and when and for how long?

A Yes. I had a job during high school in a credit office in a department store.

After high school I went to a school of jazz dance, and that was the Adler Institute.

Q The Adler Institute?

A Yes.

Q Where was that?

A In Miami, Florida.

Q What period of time were you at the Adler Institute?

A It was an intensive course every day for three and a half months.

Q You were paid for this?

A No. It was a school that I paid for.

Q I thought I asked you to tell the jury what jobs you have had since you left high school.

A I'm sorry. I misunderstood.

The jobs I had, and you are making no reference to my educational background either?

1

pgb

McIntyre-cross

512

2

Q If your attorney would like you to relate that I am sure you will do that on redirect examination. Right now I would like your jobs.

3

4

5

A My employment: I was employed as a secretary to a corporation, Allstate Properties, which was a corporation that developed condominiums in Florida.

6

7

8

Then I was later --

9

Q When was that?

10

A I believe in '73.

11

Q For how long?

12

A Until -- I was a secretary. I believe it was a year.

13

14

Q Can you give us the approximate dates?

15

A From '73 to '74, late '74.

16

Q That is January '73 to January '74?

17

A Yes -- no. It was November to November.

18

MS. COTE: May I have a moment, your Honor.

19

(Pause.)

20

Q You are saying that job was from November of '73 to November of '74?

21

22

A I believe those are the correct dates, yes.

23

Q Then what was your next job?

24

A At first I started out as a secretary and then I attained my real estate license. With that same company

25

I worked as a licensed salesman until that November.

Q Until when?

A That same November.

Then I went to work for another independent company which was Keyes Company that was selling real estate as well.

Q This was when to when?

A I believe for a year and a half.

Q Can you give us the approximate dates as best as you can remember them?

A From '74 --

Q When in '74?

MR. JOY: Your Honor, is it really necessary to get --

THE COURT: I will allow it.

A That same November of '74 to another year, '75.

Q Where was Keyes Real Estate located?

A In Plantation, very close to my house, Fort Lauderdale. It's in that area.

Q After November of '75 what did you do?

A I went to live with my sister in New Jersey.

Q Did you have another job after November of '75?

A Not for about two months and then I got a job in New Jersey at Great Gorge Resort.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

McIntyre-cross

514

Q Can you give us the dates of that, please?

A From January '76 to May '76.

Q What did you do at Great Gorge Resort?

A I was a waitress and -- cocktail waitress and commonly referred to as a Bunny.

Q Was this at the Playboy Club at Great Gorge?

A Yes.

Q So you were a Playboy Bunny?

A That's correct.

Q Did you have any other job after being a Playboy Bunny and before becoming an airline stewardess?

A I was hired with the airlines directly from the Playboy Club.

Q I believe you told us you were a Bunny until May of '76, right?

A That's correct.

Q When did you become an Eastern Airline stewardess?

A I found out that I was hired by them in May.

Q When did you begin your job?

A I started training in August and in the month of June and July I went back to live with my mother and father.

Q Have you told us about every job you have had since high school?

1 A No, I have not. I have had other jobs since.

2 Q Tell the jury what they are.

3 A I had parttime jobs. I had one job was with
4 the City of Miami. I suppose you can call it a job.

5 Q Did you receive an income for it?

6 A Yes, I received payment. What the job entailed--

7 Q What was the name of the job, if you can tell us.

8 A There was no particular name. If I can explain
9 it you could understand it. I was more like a public
10 relations representative to book conventions into the City
11 of Miami.

12 Q When was this?

13 A At the same time that I was selling real estate.

14 Q The same period of time from November of '74
15 to November of '75?

16 A Yes.

17 Q Any other job other than those you have already
18 told us about?

19 A Yes. I was working as a professional dancer.

20 Q When was this?

21 A This was shortly after my training was finished.
22 It must have been September of -- could I ask you what the
23 year was that I told you I finished the dance school? '74,
24 I believe?

Q I didn't write the dance school down because it was not a job.

A I think it was '74. The fall of '74.

Q You had that job for how long?

A Approximately three months, two months.

Q So from September of '74 to December of '74?

A About that, yes.

Q Where did you work as a professional dancer?

A Castaways Resort, Miami Beach.

Q Ms. McIntyre, you told us that you neither drink -- is that correct?

A That's correct.

Q And you don't swear either, do you?

A Not as a rule, no.

Q How long was it you were in New York before you began living with Moses Weindling?

A About three weeks.

Q That was before or after you were a Playboy Bunny?

A That was in the year of '76. That would have been after. I was a stewardess at the time.

Q Let me direct your attention to the day of the 28th when you were arrested. I ask you to think about the time when you were put into a car outside Grass

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

phb

McIntyre-cross

517

Restaurant. At that time I believe Mr. Weindling was already in the car, is that correct?

A I don't know that that is correct as I really can't remember.

Q You don't remember being placed in a patrol car?

A I know I was in a car and I know -- yes. He must have been already in the car because he was the furthest in.

Q You were sitting next to him?

A That's right.

Q At that time Mr. Weindling was very upset about being arrested?

A He was very upset.

Q Among other things he kept saying "the pocketbook, the pocketbook", right?

A Yes. He noticed that I didn't have my pocketbook.

Q At that time you whispered in his ear, didn't you, "Don't worry, they won't find anything in the pocketbook"?

A I don't know that that is how it was said. Had I whispered it no one else would have heard it.

Q Did you or did you not say -- and you can answer this with a yes or no -- "Don't worry, they won't

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pbb

McIntyre-cross

518

find anything in the bocketbook?"

A I have to answer this with a yes or no?

Q Yes or no.

MR. JOY: I think if the answer can be answered
by yes or no, fine.

THE WITNESS: Restate that question.

MR. JOY: If there is a difficulty in answering
yes or no, perhaps an explanation --

THE COURT: Let's see what happens.

Read it back.

(Record read.)

A No. Those were not my exact words.

Q What were your exact words, please?

A I said to him, "Don't worry, honey. There is
nothing to worry about." I said, "Don't be so upset."

Then he said his handcuffs were very tight and
he wanted to get them loosened. I could not help him.
He was concerned about the pocketbook and he said, "Where
is your pocketbook?" And I said, "They have it."

And he said, "Do you have anything in your
pocketbook?"

Q Who said that?

A Moses asked me if I had anything in my pocket-
book, and I said I don't have anything.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

McIntyre-cross

519

Q Do you know what he meant when he said do you have anything in your nocketbook?

A I didn't know what he meant.

Q Later on you were taken to 57th Street to the DEA Task Force offices, correct?

A That's right.

Q Later at that office you were at some point in a room with Moses Weindling, correct?

A That's right.

Q You were being asked if you would answer questions with regard to your personal history, for instance, your address, your phone number, where you worked -- do you remember that?

A I really don't remember. I guess.

Q Do you remember giving that information to any agents?

A Where I worked, yes.

Q During that period of time when you were in the same room with Mr. Weindling, do you remember saying --

A Wait a minute. I don't think I was in the same room as him. We were separated.

Q I know you were separated during a portion of the time at 57th Street. I am asking you, was there a portion of the time at 57th Street when you were in the

2 same room with him?

3 A Yes, after they had asked us questions.

4 Q At that point did you say to Mr. Weindling,
5 "Don't worry, they won't find anything"?

6 A I don't think I said that, no.

7 Q Do you remember me asking you a short time
8 before whether or not you knew how much money Mr. Weindling
9 had on him that day?

10 A I really don't think I knew what he had on him.

11 Q Ms. McIntyre, isn't it true that that night
12 you were given Mr. Weindling's money to take home with you?

13 A I remember how much money that was.

14 Q How much money was that?

15 A I think it was -- if this is at all important,
16 I didn't have enough to pay the cat bill with it, and the
17 cab bill was \$300.

18 Q The cab bill --

19 A The cat bill. So I had to charge \$100 on my
20 credit card and so it must have been \$200.

21 Q Ms. McIntyre, you said you have tried cocaine
22 on a few occasions, is that correct?

23 A I tried it.

24 Q When did you first try it?

25 A I think that was in January, the end of January.

1

pgb

McIntyre-cross

521

2

Q Of this year?

3

A Yes.

4

Q Who were you with when you tried it, if anyone?

5

A I was with Moses.

6

Q Where were you?

7

A In his apartment.

8

Q Was there anyone else present?

9

A No.

10

Q I would like you to explain to the jury in as much

11

detail as you can, please, exactly what you do when you

12

use cocaine.

13

A Exactly what you do?

14

Q Yes.

15

A You -- in this case it was a spoon, a small

16

little spoon, and you hold it to your nose.

17

Q Excuse me. It was not a spoon in the shape

18

of a woman's body by any chance, was it?

19

This was a spoon with wings and it looked like

20

the White Rock lady, the one that is on the White Rock.

21

Q It was in the shape of a woman's body?

22

A The White Rock woman.

23

Q Was it a white metal, a silver metal?

24

A Yes.

25

MR. ANOLIK: It could be Narcissus.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Where did you get that spoon?

A That was his personal belonging. He wore it on a necklace.

Q Who wore it on a necklace?

A Moses did.

Q Where are you exactly when you are trying this cocaine?

A What do you mean?

Q You said you were in his apartment. Where are you in his apartment? Are you sitting at a table?

A Do I have to answer this question?

Q If I have asked you something that is terribly embarrassing, I retract it.

MR. JOY: I object to that.

Q Where is the cocaine you were using stored?

A He had it in a plastic baggie.

Q Where did he keep that plastic bag?

A On the dresser table.

Q Laying out right on top of the dresser table?

A I don't know that he keeps it anywhere in particular. That is where it was that time.

Q Did he have other places where he stored cocaine?

A You mean other times, like in his pocket?

Q Have you ever seen cocaine in his apartment

1
2 in any other location?

3 A No, not really.

4 Q So the only time you have seen his cocaine is
5 on top of the dresser?

6 A In the little plastic bag.

7 Q Let me show you what has been marked as
8 Government Exhibit 2 in evidence. I direct your attention
9 to the small plastic bag inside it, the one that does not
10 hold the cocaine powder. Is this similar at all to the
11 plastic bag that Moses Weindling kept his cocaine in on
12 the top of his dresser?

13 A Yes, it is.

14 Q You took the cocaine that was in the plastic
15 bag on the top of the dresser and the two of you together
16 began to use that cocaine with the little white spoon in
17 the shape of a woman's body, correct?

18 A Well, he took it and he put some on the end
19 of the spoon and he held it up to my nose.

20 Q He held it to your nose. Did he say anything
21 to you as he was doing this?

22 A He told me to snort it.

23 Q What did you understand by the word "snort"?
24 What were you supposed to do?

25 A Just breathe in.

1
2 Q In any particular way?

3 A I guess you would say quickly, breathe in
4 quickly.

5 Q Did you do that?

6 A That one time I did, yes.

7 Q What was Mr. Weindling doing during this time?

8 A He was doing the same.

9 Q How many times did you snort and how many times
10 did he snort that time?

11 MR. JOY: Is it really relevant to this? I
12 don't mind --

13 THE COURT: Overruled.

14 Go ahead.

15 A I snorted that one time and he -- I don't know
16 how many times he did.

17 Q Did he do it more than once?

18 A Yes.

19 Q I would like you to look again at Government
20 Exhibit 2 and tell me this: Approximately how much cocaine
21 compared to the amount you see exhibited here was in the
22 small plastic bag that you two snorted from?

23 MR. ANOLIK: I object, your Honor. I think
24 that is not in the same form that the agent testified it
25 was originally.

1
2 MS. COTE: I don't think that has any
3 relevance to this question.

4 THE COURT: I will overrule the objection.

5 A I would say that it is about the same.

6 Q Did you snort cocaine on any other occasion?

7 A No, never.

8 Q That was the only time you ever did?

9 A That's right.

10 Q Now you said you saw Mr. Weindling snort cocaine
11 on other occasions.

12 A Right.

13 Q When did you first see him snort cocaine?

14 A I knew of it and I guess I didn't want to know
15 of it from the beginning. I didn't want to see it. I
16 can't remember when I actually, you know, saw him actually
17 do that.

18 Q Do you remember testifying earlier this after-
19 noon that you didn't know for sure he was snorting cocaine
20 until after you had been living with him for about two
21 months?

22 A I remember that.

23 Q How frequently did Mr. Weindling snort cocaine?

24 A He didn't like me to know that.

25 Q So when you said he would do it anywhere

1.

pqb

McIntyre-cross

526

2

earlier this afternoon then that is really a little

3

inaccurate?

4

MR. JOY: Which afternoon?

5

THE COURT: This afternoon.

6

MR. ANOLIK: Today? I don't understand

7

the question, your Honor.

8

THE COURT: Read the question.

9

(Question read.)

10

THE COURT: Can you answer that?

11

THE WITNESS: I really had not been with Moses

12

that much when I was living with him to know how often he

13

did it. I really don't know.

14

Q I am having difficulty hearing you back there.

15

Did you say you didn't see him that much

16

except when you were living with him?

17

A No. I said that I didn't see him that much

18

snort cocaine and especially after I was no longer living

19

with him because I really didn't see him that much.

20

Q Can you give the jury your best estimate of

21

how frequently Mr. Weindling snorted cocaine?

22

A I really can't say. I really can't say how

23

frequently he did.

24

Q Was it once a week?

25

A Oh, no.

Q Once a month?

A No, it was more than once a week.

Q Once a day?

A Possibly, yes.

Q More than once a day?

A That's possible, yes.

Q How long would it take for him to go through a quantity like the quantity you see in Government Exhibit 2 in evidence?

A How long? I really don't know. I really don't know.

THE COURT: Much longer?

MS. COTE: I do have more, your Honor.

THE COURT: We will recess until Monday.

Ladies and gentlemen, we will be in recess until Monday morning at ten o'clock.

Continue to keep an open mind. Do not discuss the case with anyone.

See you ten o'clock on Monday.

(Jury leaves the courtroom.)

THE COURT: How much longer is the case going to go on in terms of charges? That's what I am concerned about. Does anybody have any charges?

1 MR. ANOLIK: I can bring them in Monday.
2
3 I had to wait until the Government's case ended before I
4 could determine.

5 THE COURT: What do you have?

6 MR. ANOLIK: Not much. Basically, your Honor,
7 I am going to ask your Honor to charge that possession for
8 personal use of cocaine would not be within the purview
9 of this indictment. That is the main charge I am interested
10 in.

11 THE COURT: I have that already in my notes.
12 Give me the charges you want.

13 MR. ANOLIK: I will want the charge on the
14 defendant not taking the stand.

15 MR. BELLER: We may make an additional conten-
16 tion in sort of the following mold: That the Government
17 contends that there were three distributions or three
18 possessions. The defendants contend there was no three
19 and a half ounces and so on, but something to the effect
20 that a transfer of the sample even as a gift is still
21 distribution within the meaning of the statute. We will
22 draft something of that type.

23 THE COURT: Do you wish me to give your
24 contentions to the jury?

25 MR. ANOLIK: Your Honor, I think I probably

would. I would like to think about it a little bit.

THE COURT: It is my habit to give a sort of overview of what the parties contend and I will put to the jury any contention that you gentlemen reasonably feel the evidence supports in this case, or is reasonably arguable from anything that is in evidence.

Obviously I would ask you to get that to me at the beginning of Monday. Just a paragraph perhaps.

MR. ANOLIK: Nothing elaborate.

THE COURT: See you Monday.

(Adjourned to Monday, October 31, 1977, at
10:00 A.M.)

United States of America

v.

77 Cr. 472

Moses Weindling and
Patricia Joanne McIntyre

New York, New York.
October 31, 1977 - 10:10 A.M.

(Trial resumed.)

(In open court.)

THE COURT: Since Mr. Joy is not here and we have a few minutes, I want to go over your requests to charge.

MS. COTE: I have not received any requests to charge from Mr. Anolik.

THE COURT: You are now receiving them. I got them three minutes ago.

First, going down this line by line, I don't think that there is anything in the record to characterize this as a "tiny quantity." I think we can characterize it as to what size it is, and give its specific purity.

MS. COTE: Your Honor, the Government believes that any reference to purity is really irrelevant. The whole quantity charged is generically known as cocaine,

and it is really misleading to the jury to try to make them think that 11 or 12 per cent of the quantity seized in this case is what is in issue here. In fact, the Government would request that the entire quantity seized is cocaine and the Court charge on that.

THE COURT: We have proof in the record that it is of a certain purity.

MS. COTE: That is legally irrelevant.

THE COURT: Why don't you give me a charge in that vein and I will give that? I am not aware that it is legally irrelevant, but I don't see that I am forbidden to charge what the purity is. The purity here is the basis for some claim that this is user-cocaine. Whether Mr. Anolik is correct or not, that's another matter, but that is his contention. This is not 99 per cent pure cocaine just off from Colombia.

MS. COTE: The Government would request your Honor that any reference to purity be balanced by instruction to the jury that the entire quantity is known as cocaine.

THE COURT: Give me something like that, and I will charge it.

I am going to correct it so far. I am going to take out, "to take a snort", because he said, "check

1 it out". I don't think he said "to take a snort".

2 MR. ANOLIK: It's merely our contention.

3 THE COURT: I know, but contention has
4 to be based on the evidence.

5 MR. ANOLIK: As I understand it, when he said
6 "check it out", he meant to snort it. I will leave that
7 to your Honor's discretion.

8 THE COURT: I don't understand that Weindling
9 has proclaimed that he was a user.

10 MR. ANOLIK: Patty has so testified.

11 THE COURT: I am prepared to say she says he
12 is a user, but he has not said anything here.

13 MR. ANOLIK: I thought that the testimony of
14 Minichiello could be so interpreted, your Honor; apparently
15 Weindling had some that he had been using. I don't
16 remember all of his testimony, but my recollection -- I
17 don't have a copy of the record. That was the impression
18 I have.

19 THE COURT: I will give as your statement
20 of contention that Weindling claimed he is a user.

21 MR. ANOLIK: Yes, your Honor.

22 THE COURT: Where is there any statement that
23 he has a psychological dependence on cocaine? Mr. Joy
24 examined in the abstract about the difference between
25

heroin and cocaine.

MR. ANOLIK: Then I got from Ms. McIntyre the fact that he used it -- I don't know if it was me or Mr. Joy who got it out -- that he used it on a daily basis, perhaps several times a week. It came out in cross-examination as well as direct, and she wanted to take him to a psychiatrist; and then there was a series of objections, but we did at least get the word "psychiatrist" in and that can be inferred from that testimony.

THE COURT: I don't think I will charge that.

MR. BELLER: For summation purposes, it's true the word "psychiatrist" was mentioned, but only in a question by Mr. Anolik. We think that argument is not --

THE COURT: I'm not going to charge there is a psychological dependence on cocaine. Even if the record supported it, which I don't think it does, it's wholly irrelevant to the jury's determination of the issues.

MR. BELLER: What I meant, since Mr. Anolik is under the impression that there is some evidence in the record from which he may want to make an argument in summation, we think that argument should be precluded because there is no evidence in the record that the defendant ever saw a psychiatrist. Mr. Anolik is trying to put in a question.

1 MR. ANOLIK: The case is not over yet.

2 THE COURT: I put in that you claim Mr. Weindling
3 was a user and he claims he was primarily interested in
4 gambling with Minichiello who, among other things, posed
5 as a professional gambler.
6

7 MR. ANOLIK: I say professional only because he
8 said "action". A plain gambler who gambles for himself
9 would not accept bets from someone else. That is the
10 reason I used "professional gambler".

11 THE COURT: The amount of the cocaine being only
12 consistent with that of a user is not so on this record.

13 MR. ANOLIK: I am hopeful for more evidence
14 to come in.

15 THE COURT: It is out for now until you give
16 me something else.

17 The chemist gave him opinion that no one could
18 tell if a substance was cocaine without a test. That is
19 true, but I am going to charge the jury there is circum-
20 stantial evidence in the record from which they can find
21 there was three and a half ounces of cocaine in that hand-
22 bag.

23 MR. ANOLIK: That is if they believe Minichiello.

24 THE COURT: If they believe Minichiello as to
25 the statements the defendants made to him.

 MR. ANOLIK: I think we would be entitled,

your Honor, to the chemist's opinion that nobody could tell it was actually cocaine without a test.

THE COURT: I don't think that is the test here for that particular count. The jury could conclude it was cocaine without a test.

MR. ANOLIK: I realize that, but they would have to balance it with what the chemist said. That it would still be Minichiello's word that what he felt was in fact the alleged promised cocaine, your Honor. I even had the chemist feel that sample and I said, "Could you tell from feeling it--"

THE COURT: I understand.

The jury could convict without any chemist's test. So where are we going to put in this without having it appear that the jury cannot convict unless there is a chemist's test?

MR. ANOLIK: I didn't put it in that frame of reference. I merely wanted to put in that no one could tell if the substance was in fact cocaine. I have no objection if your Honor adds there, for the purpose of Count 4, if they believe Minichiello they could find so and so. I have no objection to that. I assume you would pursuant to the Government's requests.

MR. BELLER: I would suggest, your Honor, that

1 if this concept is put into the case at all it should be
2 put in perhaps when your Honor charges on how does the
3 jury find whether something is cocaine or not. Something
4 on the order of, in this case, with respect to Count 4,
5 there was no actual quantity of cocaine seized or offered
6 in evidence by the Government.
7

8 You heard the testimony of the chemist that
9 no one could determine whether a substance was cocaine
10 simply by feeling it. I charge you however that -- and
11 maybe that would take care of it.

12 THE COURT: I will do something in that nature.

13 I don't understand that Ms. McIntyre was
14 under constant surveillance. The person who had been watch-
15 ing her said he turned around to watch the window of
16 the front door and when he looked up she was going to the
17 back stairs.

18 MR. ANOLIK: What I understand is that when
19 Minichiello got up, Ms. McIntyre just a few seconds later
20 got up and started to walk toward the staircase leading
21 downstairs. From that point on Hansen had her under con-
22 stant observation and followed her down.

23 THE COURT: I didn't understand that he followed
24 her down. He went down afterwards. As a matter of fact
25 some of defense counsel objected to some clarifying inquiry

of mine because I used the word "followed". Somebody jumped up and made violent objection to that.

MR. ANOLIK: I objected to the fact that they characterized the brunette as following her. That had nothing to do with the surveillance team. That was the brunette. It had nothing to do with the police.

I think that the testimony of Hansen, your Honor, and the testimony of perhaps DeRosa was that brief seconds elapsed at most between the signal that was given and the departing of Minichiello.

MS. COTE: Your Honor, the Government believes that both the agents each estimated Ms. McIntyre was downstairs without any surveillance for approximately one minute.

MR. ANOLIK: Oh, no.

THE COURT: There was such testimony.

MR. ANOLIK: A minute may have elapsed. He was on his way down to arrest her. The signal came through about ten seconds after she got up. It was fifteen seconds after Minichiello left the building, so it could not have been.

MS. COTE: The confusion is from different time frames.

MR. ANOLIK: She didn't get to dial the phone.

The dime came back. It takes almost a minute to dial a phone.

THE COURT: The defendant urges that given the surveillance of Ms. McIntyre during the time period she could not have disposed of the cocaine. The officer was in error or lying.

Item Number 2, it seems to me --

MR. ANOLIK: That is put in only because of that case in Massachusetts where a Judge held that cocaine is not a narcotic.

THE COURT: I decline to follow any such determination by a Judge in Massachusetts.

MR. ANOLIK: Additionally, yesterday, by coincidence, CBS had a half hour special on the fact that cocaine is not a narcotic.

THE COURT: Congress has declared it a narcotic and I am bound by Congress, if not by our general common sense.

MR. ANOLIK: If I don't make such a request and later on the Supreme Court would so hold, I would be barred from raising it.

THE COURT: Your request is noted. I decline to give it.

I shall give the charge on the failure to

testify.

I am not going to charge 4, as you ask it, because obviously Pat Thomas is equally available to both sides.

MR. ANOLIK: Except she was denominated a co-conspirator by the Government.

THE COURT: She can still be subpoenaed by you and cross-examined. She is known to the parties. Her whereabouts are known through Eastern Airline if in no other way. So I will give an equally available witness charge rather than that.

I assume that if a demand had been made, which it has not been, that Steve would have been produced to testify for any defendant that wished him.

Am I correct about that?

MS. COTE: Yes, your Honor.

MR. ANOLIK: I don't recall that there was any offer prior to the time of this trial to even supply his last name, as I recall it.

MS. COTE: Both defendants know Steve. In fact Ms. McIntyre gave his last name from the stand on Friday.

THE COURT: I presume she had that last name possessed in her head at some earlier time.

1
2 MR. ANOLIK: I believe he is a cooperating
3 individual and he may be secreted by the Government.
4 I don't know.

5 THE COURT: Mr. Anolik, you have to make
6 a record that you tried to get him and failed. This is
7 sheer conjecture on your part. There has been no demand for
8 him and no request by anybody for him.

9 MR. ANOLIK: Very well, your Honor.

10 THE COURT: Presumption of innocence and
11 reasonable doubt? I trust I shall give that in appropriate
12 standard form.

13 I will not give 6 as you were asking it but
14 I will charge it in substance.

15 (Pause.)

16 (Jury present.)

17 P A T R I C I A J O A N N E M c I N T Y R E resumed.

18 THE CLERK: Ms. McIntyre, you are still under
19 oath.

20 CROSS-EXAMINATION (continued)

21 BY MS. COTE:

22 Q Ms. McIntyre, there is one area I would like
23 to clear up that we left in the middle of last Friday. That
24 was your own use of cocaine.

25 I believe on direct examination you stated that

1 you used cocaine occasionally, but you were not a
2
3 regular user at all, is that correct?

4 MR. JOY: I object to the characterization
5 of the testimony. I think the jury knows what the
6 testimony was. I think restating it in this form is
7 misleading.

8 THE COURT: Let's let the witness tell us again
9 how she characterized it.

10 A That's not exactly what I had said. I said
11 that I had tried it, but I did not use it.

12 Q On cross-examination you said that how often
13 you had used it was in fact one time, is that correct?

14 A That's correct.

15 Q Last January?

16 A Last January.

17 Q And it is your testimony that you have never
18 tried or used cocaine on any other occasion?

19 A No, I have never used it on any other occasion.

20 Q And you have never tried it on any other
21 occasion?

22 A I tried it once.

23 Q Last January?

24 A Last January.

25 THE COURT: What you are saying is to you the

word "try" and "use" mean the same thing, is that right?

THE WITNESS: No. Try and use to me doesn't mean the same thing. When you try something you experiment with it and when you try it you are initially taking it. But to use it is different because when you use it you continue to keep using it.

Q So you could say you tried it once but you did not use it?

A That's correct.

Q Where did you get the cocaine that you tried last January?

A I got it from Moses.

Q Where did he get it from?

A That I really don't know.

Q You have told us that let's say this spring you were seeing Mr. Weindling two to three times a week, right?

A About that, yes.

Q I believe on direct examination you said that he would use cocaine whenever he felt like it during that period of time?

A That's correct.

Q Did you ever have a conversation with him during

1
2 this past spring about where he got his cocaine?

3 A No. He was very confidential about that.

4 Q You mean he never told you where he got his
5 cocaine?

6 A No. As a matter of fact he never purchased it
7 in front of me either.

8 Q You never went to any place with him that you
9 thought might be a place where he got it?

10 A No.

11 Q You never met any person that you felt he
12 might in fact be getting his cocaine from?

13 A I thought it might have been Steven.

14 Q Did you have a conversation with Mr. Weindling
15 about Steven?

16 A In reference to cocaine? Or in reference to
17 his previous relationship with Steven?

18 Q Let's do both. Let's start with cocaine and
19 then let's do his previous relationship.

20 What kind of conversation did you have with Mr.
21 Weindling about Steven and cocaine?

22 A Nothing more than he thought that Steven used
23 cocaine. I never saw Steven use cocaine with Moses.

24 Q And so Steven was not -- Moses didn't tell you
25 that Steven was his supplier of cocaine?

1 A No, he didn't say that. He said that Steven
2
3 was a user as well.

4 Q Did he tell you where Steve got his cocaine?

5 A No.

6 Q In fact did he tell you that he was the person
7 who gave Steve his cocaine?

8 A No.

9 MR. ANOLIK: Objection to the form of the
10 question, your Honor.

11 THE COURT: Overruled.

12 Q Did Mr. Weindling tell you how much he was
13 spending on cocaine a week?

14 A No.

15 Q Did he tell you how much he was spending on
16 cocaine a day?

17 A No.

18 Q Let's go to that second topic: Moses
19 Weindling and Steve. How did they first meet?

20 A I think they met in the Army.

21 Q Do you know any of the details how they met in
22 the Army?

23 MR. ANOLIK: I object to that, your Honor.
24 It would be hearsay in any event, and I object to it.

25 THE COURT: Come up to the side bar.

(At the side bar.)

THE COURT: What about this?

MS. COTE: The question before it, which is simply a yes or no. I do not expect through the questioning to bring out any fact which would reveal that Mr. Weindling was in fact in jail in the Army. All I mean to bring out is that Moses Weindling met Steve as a result of his drug dealing while in the Army.

This witness has testified that she lived with Mr. Weindling for three months; that she saw him two or three times a week since that time, and yet she denies knowing what would be very basic facts of his life style, including how much he pays for cocaine or where he gets it. I say this is incredible and I am merely trying to test the witness' --

THE COURT: If you are going to get into Steve and drug dealing with the defendant in the Army, don't you have a hearsay problem in terms of prior similar act, which is the theory it can come under?

MS. COTE: Your Honor, I believe that first of all this is admissible. It could have come in as a prior similar act in our direct case, but Detective Minichiello testified that this relationship was referred to by Mr. Weindling himself and in Ms. McIntyre's presence

1
2 at Grass Restaurant.

3 THE COURT: Phrase it in those terms as to
4 whether she has a recollection of that conversation. That
5 puts it in the form I will permit.

6 MS. COTE: All right, your Honor.

7 MR. JOY: Your Honor, this is a write-out of my
8 contentions (handing).

9 (In open court.)

10 Q Ms. McIntyre, let me direct your attention
11 to April 28th when you were at Grass Restaurant.

12 A Yes.

13 Q Do you remember during that conversation that
14 Moses Weindling told Detective Minichiello that he had been
15 selling drugs while he was in the Army?

16 MR. ANOLIK: Objection, your Honor.

17 THE COURT: Overruled.

18 A I don't remember him saying that, no.

19 Q But you do remember how many drinks Detective
20 Minichiello had that afternoon, right?

21 A Well, I know he had one when we got there and
22 I know that there were two rounds ordered during lunch,
23 so I assumed it would be about three.

24 Q You remember precisely what it was he had to
25 drink also, don't you?

1
2 A I was a cocktail waitress and I can look at
3 people and tell you what they drink.

4 THE COURT: That really is not the question.

5 THE WITNESS: I know, but I am saying it's not
6 unusual. I can tell you everything they ordered as well.
7 I was a cocktail waitress. I was a stewardess. This is
8 the kind of things I can remember. I can relate to
9 numbers, and other things I don't relate to.

10 Q When you say "numbers", are you talking about
11 when you gave Detective Minichiello the number 357 and
12 had the joke with Mr. Weindling?

13 A I did not get the joke until my attorney ex-
14 plained it to me last week, and I really didn't have any
15 idea what 357 -- to me that is three odd numbers.

16 Q You didn't understand when Mr. Weindling said
17 to Detective Minichiello she carries the gun in the family?

18 A I didn't get the joke.

19 Q To direct your attention back to that conversa-
20 tion which Mr. Weindling told Detective Minichiello that
21 he had been selling drugs in the Army --

22 MR. ANOLIK: I object. I don't think that
23 was his testimony.

24 THE COURT: The jury's recollection of it will
25 govern.

MR. ANOLIK: I think she ought to ask what he said.

THE COURT: I will permit it under these circumstances.

Q Ms. McIntyre, that was part of the conversation in which Mr. Weindling was telling Detective Minichiello how clever he was, right?

A Well, it's nothing unusual for Moses to tell anyone how clever he is.

Q In fact when he was telling him how clever he was, he was saying he was able to outsmart the Army authorities and they could not find out how he was selling his drugs, right?

A I really don't remember anything like that.

Q But it's possible that that was said?

MR. ANOLIK: I object. Anything is possible.

THE COURT: Objection sustained.

Q Let's go into the background of your relationship with Mr. Weindling. When did you first meet him?

A I met him in September of '76.

Q I think you said it was your second day in New York?

A It was not even the second day. I had just spent my first night with my roommate and then met him in

the morning.

Q That roommate was Patricia Thomas?

A That's correct.

Q Where did you meet him in the morning?

A We were both getting parking tickets in front of my house.

Q Did Mr. Weindling know Patricia Thomas at this time?

A No.

Q But he did after he met you, right?

A Oh, yes.

Q Describe what happened when you both got parking tickets.

A Well, what happened is I had Florida plates and I didn't know anything about the New York laws or anything like that so I had seen the ticket on my window and his Triumph was placed in front of mine with the ticket, and we both came out and I pulled the ticket off of mine and said, "What shall I do with this? I don't know what to do." As I was speaking to him another officer came along and gave me a second ticket and then he attempted to defend me and say I had a ticket already and that is how we got into conversation.

Q You started to see a lot of each other right

1

2

after that?

3

A That's right.

4

Q You probably ate meals together?

5

A I cooked meals for him too.

6

Q He visited you at your place then, Ms. Thomas'

7

place?

8

A That's right.

9

Q And you probably visited him at his place,

10

right?

11

A No, I didn't go to his place.

12

Q You never went to his place?

13

A I did once.

14

Q And that was on York Avenue?

15

A Yes.

16

MS. COTE: May I have this marked as an exhibit,

17

please.

xxx

18

(Government Exhibit 11 was marked for

19

identification.)

20

MR. ANOLIK: May we have a side bar.

21

THE COURT: No.

22

MR. ANOLIK: Under Rule 16, I thought we were

23

entitled to it.

24

Q Ms. McIntyre, have you seen that before?

25

A No.

Q Wasn't that setting right on a table in Mr. Weindling's apartment at York Avenue?

A I was there once.

Q That apartment only had a bedroom and one other woom, the living-room, right?

A Yes, and a kitchen.

Q A small kitchen. And that was right in the living-room, wasn't it?

A I can't say -- I would not even remember. I was honestly only there once.

Q Do you know what a triple beam scale is used for?

MR. ANOLIK: I move for a mistrial.

THE COURT: The motion is denied.

You may answer.

A No.

Q Have you ever seen anything like this triple beam scale either at that apartment on York Avenue or anywhere else?

A I didn't even take science. I have not seen one --

THE COURT: The question is whether you have ever seen a scale like this.

THE WITNESS: Maybe in high school.

1
2 Q Mr. Weindling didn't have any scale like
3 this in the apartment that he lived in when you were with
4 him, right?

5 A No.

6 Q In fact he didn't have any scale, right?

7 A That's right. When we lived together?

8 Q When you lived together.

9 A That's right.

10 Q No scale at all?

11 A No. Just one that he put -- it is a small
12 kitchen thing that you put for postage. It's a postage
13 scale.

14 Q So he had a small postage scale in his kitchen?

15 A Yes.

16 Q What quantities could that small postage scale
17 weigh?

18 A I used to use it for a diet. I was always
19 watching my weight.

20 Q What quantities could that postage scale weigh?
21 How many grams or ounces?

22 A It had two columns, one for how much the postage
23 was and one for weight.

24 Q How much was the weight?

25 A I don't know. I really don't remember. Maybe

eight ounces and maybe sixteen. I don't know.

Q It went up to an pound, probably?

A I think so.

MS. COTE: Your Honor, I offer Government Exhibit 11 in evidence.

MR. ANOLIK: Objection, your Honor. There is no basis.

THE COURT: Objection sustained.

MR. ANOLIK: I ask it be taken out of the view of the jury.

THE COURT: Put it back in the box.

(Pause.)

Q Moses Weindling was going to school last fall and this past spring, right?

A Yes.

Q That school was Manhattan Community College on West 51st Street, right?

A I believe so, yes.

Q And he was receiving financial aid from that college, right?

A Yes.

Q At lest this last spring?

A Well, since I have known him he told me he has received grants and loans and things like that.

1 Q That's because he didn't have another source
2
3 of income to support him, right?

4 A I don't know if that's why. He freelanced.
5 He was a freelance photographer.

6 Q Did he tell the college about his income as
7 a freelance photographer when he applied for financial aid?

8 MR. ANOLIK: If she knows.

9 A I don't know.

10 Q Do you know if he put it on his income tax
11 returns that he filed for 1976?

12 MR. ANOLIK: I object. I object to the
13 good faith of these questions, your Honor.

14 THE COURT: Overruled.

15 MR. BELLER: We are ready to demonstrate the
16 good faith with a document that we have.

17 MR. ANOLIK: I ask he be admonished because
18 he is doing something he can't do.

19 THE COURT: No, no, both of you are arguing
20 matters before the jury which should not be argued before
21 the jury. Frankly, you began it. I can make that
22 statement.

23 We will go forward.

24 Q Ms. McIntyre, you told the jury about some
25 trips you had taken while you were a stewardess, correct?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pqb

McIntyre-cross

555

A Correct.

Q You told, I believe, the jury, that you were ordered once to go to Acapulco.

A Yes.

Q You only went once to Acapulco?

A Yes.

Q That was because you worked as a stewardess on a flight to Acapulco?

A Yes.

Q You went once and only once to Puerto Rico, right?

A I don't know that I went once. I know that a lot of times we have what is called a turn-around where you go and you turn around and come right back. You really never get off the plane and see Puerto Rico.

Q So when you said on direct you only went to Puerto Rico once than maybe that was incorrect?

A No. If I thought you were asking me when I stayed -- I spent one night there and I spent one night in Acapulco. The other times I didn't spend a night.

Q So you went to Puerto Rico more than once but you only stayed overnight on one occasion?

A Yes. I stayed overnight on one occasion.

Q Is the same true for Acapulco, you went more than once, but you only stayed overnight?

1
2 A Wait a minute. I am confused. I am totally
3 confused.

4 THE COURT: Let's have the last question read
5 back which I think was whether you went to Acapulco more
6 than once.

7 THE WITNESS: No, I didn't go there more than
8 once.

9 THE COURT: Even on a turn-around situation?

10 THE WITNESS: I went there once, but it was a
11 layover.

12 THE COURT: Proceed.

13 Q Have you ever been to the Club Internationale?

14 MR. ANOLIK: Where?

15 A Which club?

16 Q Have you ever been to any Club Internationale?

17 A Club Internationale? The name is beyond me.

18 Q So when you asked me where, you didn't really --

19 MR. ANOLIK: We asked where, your Honor.

20 A I know of a lot of Club Internationales from
21 just my experience knowing that most major cities have
22 Club Internationales.

23 Q You have never been to a Club Internationale?

24 A When I was Miss Miami Beach they sent me
25 to so many places I can't remember.

Q Let's talk about the times since last fall

1 when you were working as an Eastern Airline stewardess
2 and when you knew Moses Weindling. Have you been to a
3 Club Internationale since that time?
4

5 A Since last year? No, I don't think so.

6 Q Have you been to the Caribbean Beach Club El
7 Verde in Puerto Rico?

8 A That's where I stayed with my parents and with
9 Moses.

10 Q Moses Weindling was along on that trip?

11 A Yes.

12 Q Who paid for Moses Weindling?

13 MR. JOY: May we approach the bench, your
14 Honor? I object to the question. May we approach the
15 bench?

16 THE COURT: All right.

17 (At the side bar.)

18 THE COURT: What is the matter with the question?

19 MR. JOY: The question is designed to elicit the
20 fact that Moses Weindling flew as her husband. I think
21 this comes again as an attempt by the Government to show
22 some kind of bad act which I don't think passes -- I
23 don't think that is admissible under any ground, and I
24 would object to it.

25 THE COURT: Certainly it is admissible to show

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pqb

McIntyre-cross

558

the relationship between these two, and motive and bias in testifying as she is doing.

MR. JOY: I have no objection to her saying she went down with Moses or slept with him or did anything else. I think it is highly improper that she signed him up as her husband, and this is designed for one purpose but not designed to show the relationship. It is designed to show that she put him down as her husband, which probably half of the stewardesses who work for Eastern Airlines do.

THE COURT: She has been giving testimony about (a) she doesn't know anything about this, and (b) Moses was only a user. Can't the jury take this relationship between them in evaluating her credibility because it goes to motive or bias in the testimony she is giving about the overall picture.

If she regards this fellow as so close she can place him with her parents, and treats him as her husband, that bears upon how the jury can assess what she says about him and herself.

MR. JOY: I think the point is they certainly have been using the cocaine together. I don't think it is necessary for the Government -- and the Government is doing it for one purpose and that is to show -- they

1 are going to say, "Well, you lied on that application
2 in that you said he was your husband", and the whole shmear.
3 That's the only reason the Government is bringing this
4 testimony --

5
6 THE COURT: Also she says she doesn't live
7 with him -- I will overrule your objection.

8 (In open court.)

9 (Record read.)

10 A I had a pay check for \$250. When I went to buy
11 the ticket there was some change back. I am not sure
12 of the amount. But I know the change back was 150, and
13 I know that because I left it on the counter and forgot it.

14 Q You are saying that you paid for Moses Weindling's
15 plane fare from your pay check?

16 A Yes. You see they took my pay check and
17 took the amount of the ticket out and there was \$150 change.
18 We were so late and I was so rushed that I ran off to the
19 downstairs where I get my free tickets and I forgot all about
20 the \$150.

21 Q You also paid for Moses Weindling's hotel bills
22 and meals on that trip?

23 A I put them on my credit card.

24 Q In fact when the credit card bill came you paid for
25 those expenses incurred by Mr. Weindling?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pqb

McIntyre-cross

560

A Unfortunately, yes.

Q Did Mr. Weindling go on that trip with you to Acapulco too?

A No.

Q Did you pay for his plane fare on any trip to Acapulco?

A I was working. I was working that trip. It just happened that I had to spend the night because it's such a long trip.

Q Did you pay for any other plane trips that Mr. Weindling took?

A As a birthday present the weekend before we were arrested, I paid for our flights to Pittsburgh. That was to celebrate his birthday with my family.

Q You paid for the full fare for Mr. Weindling to take this trip to Pittsburgh and this trip to Puerto Rico, right?

A I paid.

Q You paid for that?

A Yes.

Q Isn't it true, Ms. McIntyre, that no one paid for Mr. Weindling to take those trips, and isn't it true that he flew --

MR. ANOLIK: She should permit an answer to

1 a question. She wants to make a speech.

2 THE COURT: Continue.

3 A What happened was as I went down to pick up
4 my passes, I was there with my supervisor and his secretary,
5 and she was writing out a pass for me because I had -- every
6 time I get a letter from a passenger, a complimentary
7 letter, I fly free.

8 Q Please answer the question.

9 MR. JOY: She is trying to answer the question.

10 THE COURT: Let's have the question read
11 back.

12 (Question read.)

13 Q The rest of the question was he flew on Eastern
14 Airlines?

15 A These passes, I was explaining how I got them.
16 As it was, I had absent-mindedly left money on the counter
17 or not got the -- I don't know what I did -- but I know
18 he came running after me. He came down to the office and
19 said, "Honey, did you get the \$150?" And I don't know
20 whether I had it or hadn't. I was confused. And I was
21 late. And the secretary assumed that we were married and
22 so she had written him a ticket. I honestly never asked
23 for that ticket. She assumed that he could have the
24 ticket.
25

1 Q You did not fill out a card in which you repre-
2 sented that Mr. Weindling was a member of your family?
3

4 A No.

5 MS. COTE: I would like to have these
6 documents marked as Government exhibits, please.

xxx 7 (Government Exhibits 12 and 13 were marked
8 for identification.)

9 Q Ms. McIntyre, isn't it true that Moses Weindling
10 flew on Eastern Airlines flights with passes obtained
11 because you represented that he was a member of your family?
12 Yes or no.

13 A Well, it just was a misunderstanding. I
14 didn't know what to say at that point.

15 Q What was the name of this person who made this
16 mistake?

17 A Eloise.

18 Q Eloise who?

19 A I know her as Eloise.

20 Q Where does she work?

21 A She is my supervisor's secretary. She works
22 at LaGuardia.

23 Q So you never would have signed a statement
24 telling Eastern Airlines that Moses Weindling used
25 passes with Eastern Airlines in the name of a member of

your family against its regulations, against --

MR. ANOLIK: Objection. Again I have to move for a mistrial. I hate like heck to do it, but she is --

THE COURT: Motion denied.

MR. ANOLIK: She knows she should not do it.

THE COURT: Proceed.

A That's because this happened that one time, and I didn't deny that it happened and Eloise knew she had made that mistake.

Q So it was Eloise's fault really, wasn't it, and not your fault?

A I'm not blaming Eloise because she really thought that, you know, that he was my husband. But I didn't tell her that.

Q So there was really no reason for you to make a statement to Eastern Airlines saying that Moses Weindling had used passes on Eastern Airlines in the name of a member of your family?

A No reason except for the fact that I'm honest.

Q Do you mean that on May 27th of this year you voluntarily walked into Eastern Airlines and said, "I'm honest. Let me write out a statement for you about a trip that Moses Weindling took with me with an Eastern

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

McIntyre-cross

564

Airlines pass months ago."

MR. JOY: Is this a question?

A I came in there and had a conference with some people and a lot of things were said about the arrest primarily. This issue was just a secondary topic that I offered as information and at the time I was not too fond of Moses when I said that.

Q But you were not hurting him when you made that statement to Eastern Airlines, were you?

A I guess I hurt myself.

Q Not because you were just volunteering the information either, was it?

A It was not known that he did this because the secretary -- I'll tell you why I think it happened. Because there -- for some reason he was looking for me and he didn't know where I was flying and he found me in class, but he found out through the secretary and he found out the information by calling up the airlines and saying that "I'm her husband and I need to get a hold of her", and they gave him the information.

Q Ms. McIntyre, you told us about the one trip that Eloise made the mistake on. Was that the trip to Puerto Rico or the trip to Pittsburgh?

A The trip to Pittsburgh I took Allegheny and paid

1
2 for that.

3 Q You paid for Mr. Weindling on the trip to
4 Pittsburgh?

5 A Yes, I believe I did.

6 Q So it was only the trip to Puerto Rico that
7 you didn't really pay for him?

8 A Yes.

9 Q I show you Government Exhibit 12 for identi-
10 fication. I ask you if that is your signature at the
11 bottom of the page.

12 A Yes.

13 Q Let me show you Government Exhibit 13 for
14 identification. I ask you if that is your signature at the
15 bottom of the page.

16 A Yes.

17 MR. JOY: Excuse me. May we approach the
18 bench? I believe there is Rule 16 material which we
19 have not been supplied with.

20 THE COURT: Is it going to be offered in evi-
21 dence?

22 MS. COTE: Yes, your Honor. The Government
23 offers both of these documents in evidence.

24 THE COURT: Show it to the other side and
25 they will look at it while we come to the side bar.

(At the side bar.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

McIntyre-cross

566

MR. JOY: I take it these are statements
alleged to have been made by my client.

THE COURT: What do you claim is the basis of
requirement of early disclosure?

MR. JOY: If I can look at 16.

THE COURT: That has to do with the stuff to
be put in on the case in chief and not for cross-examination.

MR. JOY: 16A?

MR. BELLER: How did it become relevant until
she testified that she told a lie in traveling to Pitts-
burgh?

MR. JOY: We have a further problem. I refer to
the husband, Charles McIntyre.

THE COURT: What?

MR. JOY: Your Honor's direction was that
the Government was not to put in the fact about her
marriage and divorce.

THE COURT: This was somebody in Florida.

MR. JOY: That was Charles McIntyre.

THE COURT: I know, but that had to do with
them attacking her by getting in past history.

MR. JOY: They are doing that by the back door
now.

THE COURT: This is under the same rubric

1
2 as we discussed before. The relationship between her
3 and Moses and Moses using somebody else's --

4 MR. BELLER: Look at Number 12, she signed
5 this. She put him in as her husband to get him a cheaper
6 rate. "I certify that all this is true", even knowing
7 that she might be subject to an action by the airlines.

8 MR. JOY: The point of this, it is extraneous
9 use material that is being offered. They have asked a
10 question on their cross-examination and they are barred by
11 the answer. They are not allowed to put in this kind of
12 material. It's the same thing as putting in a record of
13 a conviction. They are allowed to do that under the rule,
14 but they are not allowed to put in extraneous collateral
15 matter to bring out what they claim is a bad act.

16 MR. ANOLIK: They are bound by her answers.

17 THE COURT: I don't understand that objection
18 at all.

19 MR. JOY: If we can just look at --

20 THE COURT: Proceed.

21 MR. JOY: It is under 608. It states very
22 clearly that when you are asked about a bad act -- they
23 asked it in their cross and they are bound by the answer.

24 THE COURT: The answer they got makes both of
25 those admissible over her signature.

MR. JOY: If your Honor will refer to

608 --

(Pause.)

MR. JOY: I point this out to your Honor
(indicating).

THE COURT: That means another witness. I
overrule that objection. You may proceed.

MR. ANOLIK: This is a prior act. They should
have told us about that.

THE COURT: I can't put my finger on it,
but it does not move me to sustain the objection.

MR. ANOLIK: Very well, your Honor.

(In open court.)

MS. COTE: At this point I request permission
to read Government Exhibit 13 for the jury.

THE COURT: I take it what you have urged upon
me are your objections.

MR. JOY: I have noted my objection and
move for a mistrial.

THE COURT: I take it the record is clear.
Did you lay a foundation with regard to sig-
natures on both exhibits?

MS. COTE: I had the witness identify each of
the signatures.

1
2 THE COURT: The objection is overruled and
3 motion for mistrial is denied.

xxx 4 (Government Exhibits 12 and 13 were received
5 in evidence

6 (Ms. read to the jury from Government
7 Exhibits 12 and 13, respectively, in evidence.)

8 MS. COTE: At this time I request permission
9 to pass them to the jury, your Honor.

10 THE COURT: Do we really need to do that having
11 read them? You really don't need to give them to the
12 jury. You have read them to them.

13 Proceed.

14 Q Ms. McIntyre, did Mr. Weindling ever tell you
15 how he met Detective Minichiello?

16 A I think he met him for the first time that day.

17 Q By "that day" you mean the 27th at Sixish
18 Restaurant?

19 A Yes.

20 Q Did he tell you who Detective Minichiello was?

21 A Steven's friend.

22 Q That is all you knew about who Detective
23 Minichiello was?

24 A That's all I knew.

25 Q You were not curious to know why all of a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

McIntyre-cross

570

sudden you were meeting this new person?

A No.

Q Did Moses Weindling tell you why the same four of you were getting together the very next day at Grass Restaurant for lunch?

A Well, that was nothing unusual because we had gone out with Steven before only he usually had a girl friend.

Q Now he had a male companion?

A Right.

Q So I take it from your answer that you were answering my last question no, that Mr. Weindling didn't tell you why in fact you were meeting the same four of you on the following day at Grass Restaurant?

A Just to have lunch. That's all I knew.

Q Isn't it true that at Grass Restaurant Moses Weindling was wearing knee-high boots?

A Yes.

Q And that he had his pants legs tucked into them?

A Yes.

Q When did you see Moses Weindling put those boots on?

A I really don't remember.

Q I remember you telling the jury you were at his apartment before going to Grass Restaurant, is that correct?

1
2 A Yes, what's where I stopped before we went.

3 Q He was getting ready to go to The Grass
4 Restaurant while you were there, right?

5 A I think -- I'm not sure, but I think he wanted
6 to change clothes because he had school clothes on before.

7 Q So you probably did see him put those boots on,
8 didn't you?

9 MR. JOY: I object to the form of the ques-
10 tion.

11 THE COURT: I will sustain the objection as to
12 form. Rephrase it.

13 Q If he was going to change clothes, he did put
14 those boots on after you arrived, didn't he?

15 A I honestly don't remember whether he changed
16 clothes or not. I think he changed clothes.

17 Q Did he change clothes with his boots on?

18 A If he changed clothes he had to have taken
19 his boots off.

20 Q You watched him put those boots on?

21 A I don't remember.

22 Q But you do remember going to Grass Restaurant
23 with him later in the day, right?

24 A Yes.

25 Q When he arrived at Grass Restaurant and the

1 two of you together walked to the table and sat down with
2 the informant and with Detective Minichiello, Moses
3 Weindling took a bag of cocaine out of his boot, didn't he?
4

5 A No. I didn't see him do that. I didn't know
6 of anything like that.

7 Q You sat down right at that same table just
8 when he did, didn't you?

9 A Don't you understand, if he sits --

10 Q Didn't you, yes or no?

11 A I sat at the table, yes.

12 Q He was right across from you, isn't that true?

13 A Yes, but there was a tablecloth and --

14 Q You are telling the jury he might very well
15 have taken that cocaine out of his boot but you would not
16 have seen it?

17 MR. JOY: I object to that.

18 THE COURT: I will sustain the objection to
19 that as to form.

20 Q You are telling the jury you don't know
21 whether or not he took that cocaine out of his boot, right?

22 A I honestly don't.

23 Q But don't you remember the conversation in
24 which Detective Minichiello asked Moses Weindling if he
25 had the package there?

1
2 A No.

3 Q Don't you remember Moses Weindling telling
4 him he didn't have the package there, neither of you had
5 it on you at that time?

6 A No. I was talking to Steven a lot.

7 Q Didn't Moses Weindling in fact say it would
8 inconvenience you, Ms. McIntyre, to go and get the package
9 at that point?

10 A The inconvenience to me might have been if he
11 said anything about it in front of me.

12 Q You were at that table?

13 A Yes.

14 Q Didn't Moses Weindling at this point tell
15 Detective Minichiello he only had three and a half ounces
16 to sell and not four and a half?

17 A I didn't hear anything like that.

18 Q Didn't Moses Weindling, when he passed that sample
19 to Detective Minichiello, assure him it came right from the
20 package?

21 MR. JOY: Your Honor, there is no way that
22 question can be answered.

23 THE COURT: I sustain that.

24 Q Let me refer to your specific words, Ms. McIntyre.

25 A Yes, go ahead.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pqb

McIntyre-cross

574

Q Do you remember telling Detective Minichiello that the quality of the package and the sample were good because you tried it the night before and it hurt your nose?

A That is totally, if you don't mind me saying, that is totally a lie. It is. I was not even with him the night before.

Q Where were you?

A I took my bike back home.

Q And you didn't see Moses Weindling after you took your bike back home?

A As far as I can remember, no.

Q Is there anyone who could verify that you didn't see --

MR. JOY: I object to that.

THE COURT: Sustained.

Q Friday you testified that you took Moses Weindling's money home with you after you were arrested, isn't that true?

A I took it to pick up the cat.

Q This was the money that he had on him at the time he was arrested, correct?

A I'm trying to think whether he had it or I had it. I think he had it because he paid the bill.

Q Where specifically did he have it on him?

A The money? I had the money.

When?

Q When he was arrested.

A Oh, that. I don't know.

Q But you do remember being given by the Drug Enforcement Task Force agents Moses Weindling's money to take home after you were arrested?

A You see, that was a long time after I was arrested.

Q It was that same night, correct?

A Yes, it was.

Q On Friday you testified that the amount they gave you was \$200.

A I thought that's what it was because I know I had to put part of the bill on my credit card. I really can't remember it.

Q Isn't it a fact that you were given \$900, approximately, give or take a very few dollars, to take home with you that night and that \$900 was money Moses Weindling had had on him when he was arrested?

A I don't think it was that much. I didn't count it, but I know I had to put that \$100 on my credit card and I don't know why. I don't know.

1
2 Q Ms. McIntyre, were you or were you not given
3 \$900 by the agents to take home that night of Mr.
4 Weindling's money?

5 A I can't remember. I don't know -- \$900? That
6 doesn't make sense.

7 THE COURT: Are you going to be a little longer?

8 MS. COTE: Five more minutes.

9 THE COURT: We will take a break at this
10 point. I am recessing at 12:30, and commencing at 2:15.
11 We will take a short recess at this point.

12 (Recess.)

13 (In open court; jury present.)

14 BY MS. COTE:

15 Q Ms. McIntyre, do you remember me asking you
16 about Mr. Weindling's York Avenue address?

17 A Yes.

18 Q That was 1520 York Avenue, right?

19 A I believe that's the address.

20 Q Ms. McIntyre, you lived with Patricia Thomas?

21 A Yes.

22 Q She lives on the upper East Side just like
23 you and Moses do, right?

24 A Yes, I believe so.

25 Q On Friday you testified that Ms. Thomas was

black, isn't that correct?

A That's correct.

MS. COTE: May I have this marked.

(Government Exhibit 14 was marked for
identification.)

Q Let me show you what has been marked as Govern-
ment Exhibit 14 for identification. That is a photograph,
isn't it?

A Yes.

Q It's a photograph of Patricia Thomas?

A Yes.

MS. COTE: Your Honor, I offer this photograph
in evidence and I ask it be shown to the jury, and I have
no further questions.

MR. JOY: I object, your Honor.

Can we approach with this.

(At the side bar.)

MR. JOY: The problem with the picture is that
it is being introduced and apparently she is not black.

MR. BELLER: You can't tell one way or the other.

MR. JOY: The way that picture is, is that she
is white-looking. The Government has obviously
interviewed her at least according to her witnesses. If
she maintains she is white, let them put on a witness that

1 says so. This is a misleading picture which may be a wig
2 and color taken away to make her look white.
3

4 THE COURT: The issue is whether she might
5 appear white to an agent.

6 MR. JOY: That is not going to do it.

7 MR. ANOLIK: I want a voir dire under the
8 circumstances that picture was taken.

9 THE COURT: You can have that.

10 MR. ANOLIK: From who? I want to know how they
11 got that picture and under what circumstances.

12 THE COURT: I deny that.

13 MR. ANOLIK: The Government is misleading the
14 jury.

15 MR. JOY: It is tremendously misleading. We
16 don't know what that girl looks like.

17 THE COURT: I don't want to be in a position
18 to speak for the Government, but in the interest of saving
19 time, Mr. Minichiello did not say she was black. He said
20 she was tan. Somebody else said she was tan. Then all
21 of a sudden it comes out she was black. I don't know
22 who said that.

23 MS. COTE: Ms. McIntyre.

24 THE COURT: So the jury has the impression that
25 the Government agents are misrepresenting whom they saw

1 because they saw somebody who turned out to be incapable
2 of being that person because of the difference in color.
3

4 Now they have a picture of the girl that this
5 witness says was the girl. They want to put it on. It
6 would seem to me from looking at that picture one might
7 say she was white.

8 MR. JOY: From that picture. But there are pic-
9 tures of black people that can be made to look white.

10 THE COURT: It's a question for the jury.

11 MR. JOY: The Government knows where this woman
12 is.

13 THE COURT: They have chosen to proceed in this
14 fashion, and I find nothing inappropriate.

15 MR. JOY: It happens to be a picture of her
16 as a Playboy Bunny. It is another one of a continuous
17 trial by ambush that the Government is attempting to put in
18 material which --

19 THE COURT: The objection is overruled.

20 (In open court.)

21 THE COURT: The exhibit is received. Objection
22 is overruled.

23 (Government Exhibit 14 was received in
24 evidence.)

25 MS. COTE: May I show the picture to the jury?

THE COURT: You may.

(Government Exhibit 14 given to the jury.)

MS. COTE: At this time, your Honor, I have no further questions.

REDIRECT EXAMINATION

BY MR. JOY:

Q Pat, were you working on April 28th?

A No, I was not.

Q How about the 27th?

A No.

Q Why weren't you working?

A I had an accident on April 7th and I had a broken rib.

Q Let me ask you this question: You on one occasion allowed Moses Weindling to fly as your husband, is that correct?

A That's correct.

Q Do you know of any other stewardesses that have done the same thing with their boy friends?

A Quite frequently it happens.

Q Is that the reason why they have that regulation?

A That's right. I suppose so.

Q There was a time when you worked as a Playboy Bunny, is that correct?

1
2 A That's correct.

3 Q For how long did you do that?

4 A About six months.

5 Q That was at Great Gorge?

6 A That's right.

7 Q Where is Great Gorge?

8 A It's in the country in North Jersey.

9 Q Do they have any restrictions on your activities
10 while you are a Bunny?

11 A Yes, they do.

12 Q Would you tell us what they are.

13 A Well, I lived in the dormitories there. They
14 had a 24-hour guard there. There was a fence all the way
15 around the premises. We were not permitted to have guests
16 in our room nor were we permitted to go to any of the
17 guestrooms.

18 The telephone conversations were controlled
19 as far as the person that called in had to give their
20 name and identify themselves.

21 We had a roommate.

22 We had certain regulations as far as our
23 appearance and time.

24 We were not permitted to date customers.

25 Q Was there somebody who oversaw this dormitory

or whatever you were living at?

A We had a Bunny mother and she had two assistants.

Q What were their functions?

A To enforce the rules.

Q Let me ask you this: Did you ever pose for any of the Playboy magazines?

A No.

Q Either nude or semi-nude or anything like that?

A No.

Q Have you ever been a witness before in any case or any proceeding?

A No.

MR. JOY: I have no further questions.

MR. ANOLIK: I have a few questions.

RECROSS-EXAMINATION

BY MR. ANOLIK:

Q Mx. McIntyre, when you went down to Puerto Rico, Moses Weindling was down there too?

A Yes.

Q Do you know whether he gambled down there?

A Quite a bit, yes.

Q Would you call Moses Weindling a sick gambler?

MS. COTE: Objection, your Honor.

THE COURT: Sustained.

Q Had you ever seen him gamble before?

A Yes. In Puerto, and I don't know if you call the lottery tickets gambling, but he always bought lottery tickets.

Q Do you know if he ever played the numbers before?

A I don't know.

Q Ms. McIntyre, when you were arrested you had been with Moses Weindling about how long prior to your arrest?

A Since about a quarter after two.

Q So when Ms. Cote asked you about what you did after you got up in the morning, you were not with Moses Weindling in the morning, were you?

A No.

Q When was the first time you saw him that day on the 28th of April?

A About a quarter after two.

Q You said that he was changing his clothes because of school, is that correct?

A I'm pretty sure he said he had to change his clothes. I really can't remember.

Q Do you know that he did go to college though?

1

pqb

McIntyre-recross

584

2

A Yes, he went to college.

3

Q Do you know that he was a freelance photographer?

4

A Yes.

5

Q Did he make money in that capacity?

6

A I believe so.

7

Q He had equipment, did he not?

8

A Oh, yes.

9

Q A lot of equipment, is that true?

10

A Yes.

11

Q After you were arrested there came a time

12

that you were released, is that correct?

13

A Yes.

14

Q What time was that?

15

A About evening. About eight or nine o'clock, I

16

believe.

17

Q P.M.?

18

A Yes.

19

Q You testified on cross-examination that

20

you were given certain property of Moses Weindling, is

21

that correct?

22

A Yes.

23

Q Did you stop and count anything at that point

24

in time?

25

A No.

Q Did you read what you signed, if anything?

A I don't even remember signing.

Q So you have no independent recollection of having gotten any particular sum of money that belonged to Moses Weindling, is that true?

A I don't remember. I know I got some money, but I don't remember how much.

Q When it came to pay the bill for the cat, you had to add something out of your own currency or your own funds?

A I had to charge \$100.

Q About how much was the bill altogether? Do you have any idea?

A It was about \$300.

Q Just prior to your arrest at the phone booth -- do you remember that point in time?

A Yes.

Q You got up shortly after or together with Mr. Minichiello, which was it?

A Pardon me?

Q I will rephrase the question.

Just prior to your arrest you said that you went to make a phone call, is that right?

A Yes.

1
2 Q Who left the table first, you or Mr.
3 Minichiello?

4 A Mr. Minichiello.

5 Q About how long after his leaving the table
6 did you leave?

7 A Very shortly after.

8 Q Do you remember being arrested, the physical
9 act of being arrested?

10 A Oh, yes.

11 Q How long did it take you, would you say, to
12 walk from the table to the staircase, referring to Govern-
13 ment Exhibit 4, as amended, to the staircase here (indicat-
14 ing), and then downstairs and over to the phone? How
15 long a period of time would you say it takes to walk that
16 distance?

17 A Well --

18 Q The way you were walking.

19 A At first I started and then I stopped because
20 Moses called me to give me a dime for the phone call.
21 So he gave me the dime and I turned around and took the
22 dime and then I turned around and went back down the steps.

23 As I got to the phone he really -- I didn't
24 even put the call through. I would say seconds, just
25 a matter of seconds.

1

pgb

McIntyre-recross

587

2

Q About a minute or so altogether?

3

A Not even.

4

Q Seconds to a minute?

5

A Yes.

6

Q At any time did you ever hear Moses Weindling

7

talking about selling narcotics, cocaine?

8

A No, never.

9

Q In all the time you knew him, is that so?

10

A That's right.

11

Q And at the table either on the 27th in The

12

Sixish Bar or on the 28th in The Grass Restaurant, did

13

you ever hear Moses Weindling talking about selling cocaine

14

or anything about cocaine?

15

A No, I never heard anything like that.

16

Q On the 27th, however, you did hear discussions

17

concerning playing a number, didn't you?

18

A Briefly, yes.

19

Q Because you in fact chose the number, isn't

20

that so?

21

A That's right.

22

Q Did you ever hear Moses Weindling say anything

23

to anybody about having sold cocaine to Steven?

24

A Did I hear what?

25

Q Moses Weindling ever say he sold cocaine to

1
2 Steven?

3 A No.

4 Q Do you know whether or not Steven used cocaine?

5 A I understand that he did.

6 Q You also understand that Mr. Weindling used
7 it, is that correct?

8 A I knew that.

9 Q But you didn't know where he got his cocaine,
10 did you?

11 A No.

12 Q The Government made a big play of showing you
13 a scale here, do you remember that?

14 MR. BELLER: Objection.

15 THE COURT: Sustained as to form.

16 Q I think it was Exhibit 11.. You have no
17 independent recollection of ever having seen this before,
18 is that correct?

19 A I don't know where that came from.

20 Q You say that Moses Weindling did have a postage
21 scale in the apartment, you believe, is that right?

22 A Yes, he had that.

23 Q Do you know whether he ever mailed out photo-
24 graphs and things of that sort to customers?

25 A Oh, yes, all the time.

Q And he had to put postage on that?

A Yes.

MR. ANOLIK: I have no further questions.

RE CROSS-EXAMINATION

BY MS. COTE:

Q Ms. McIntyre, do you remember being asked just now whether or not you had ever posed for a Playboy spread, right?

A That's right.

Q Have you ever posed for a spread for any other magazine?

A No.

Q Do you remember filling out a form which you gave to Playboy in which you said you would like to be a playmate?

A I don't remember.

MR. JOY: I object to that.

THE COURT: Overruled.

A I really don't remember.

(Government Exhibit 15 was marked for identification.)

Q Let me show you the document that has been marked as Government Exhibit 15 for identification. I direct your attention to the sixth line. Would you please

1 read that to yourself. Does that refresh your recollec-
2 tion as to whether or not you ever told Playboy you
3 would like to be a playmate?
4

5 A I'm not even sure this is mine.

6 Q Are you Patty Mac? Yes or no, Ms. McIntyre.

7 A It's possible. I was not a playmate.

8 Q You also testified, Ms. McIntyre, that Moses
9 Weindling had photography equipment.

10 A Well, you see --

11 Q Yes or no, Ms. McIntyre.

12 A I don't know that it was all his. He had a
13 partner and a studio and I know --

14 Q Did he have a studio at the time --

15 MR. ANOLIK: Your Honor, I object. She does
16 not permit the witness to finish an answer. The witness
17 is slow-speaking.

18 THE COURT: We will get the answer finished
19 and then go on.

20 You said he had a partner and a studio?

21 THE WITNESS: He was supposed to be into part-
22 nership, but after the arrest that all abolished.

23 Q Mr. Weindling didn't have a photograph studio
24 at the time of his arrest?

25 A He was negotiating things, but it didn't go

through.

Q It fell through, in fact?

A It fell through.

Q Ms. McIntyre, you were hired by Playboy Club in Great Gorge on January 19, 1976, correct? Let me show you Government Exhibit 15 for identification to refresh your memory.

A Okay.

Q Is that true?

A Yes, I believe so.

Q You terminated that job on June 13 of 1976, didn't you?

A I thought it was May. I guess it was June.

Q You left that job at Playboy Club to become a stewardess on Eastern Airlines?

A Yes.

MS. COTE: Your Honor, at this time the Government would offer Government Exhibit 15 for identification in evidence.

(Pause.)

MR. JOY: Your Honor, may we approach the bench.

(At the side bar.)

MR. JOY: Your Honor, this doesn't appear

1 to be signed by anybody.

2
3 MR. ANOLIK: The handwriting has not been
4 authenticated.

5 MR. JOY: I assume the only reason they have
6 that is with respect to being a playmate.

7 MR. ANOLIK: She has no recollection of that.

8 THE COURT: What are you offering this for?

9 MS. COTE: Your Honor, on redirect examina-
10 tion Mr. Joy asked Ms. McIntyre whether or not she had
11 ever done a Playboy spread --

12 MR. BELLER: Posed nude or otherwise for Play-
13 boy Magazine, and she said no.

14 THE COURT: In other words, you want to get
15 this one line? Have you identified that that is her
16 handwriting?

17 MS. COTE: It is information given by her and
18 about her.

19 THE COURT: We don't have a record that
20 establishes that this is binding upon her.

21 MR. JOY: This is an example when you put in
22 such material.

23 THE COURT: They are entitled to ask her
24 about this. Whether the exhibit becomes admissible is
25 another thing.

1 MS. COTE: Comparing it with other documents
2 it appears to be her handwriting.

3 MR. BELLER: We can ask her if she had
4 an interview when she applied to the Playboy Club. I
5 gather she will answer here yes to that. We can ask her --

6 THE COURT: Did anybody ask her if that is
7 her handwriting?

8 MR. BELLER: We will ask her. If she says yes,
9 fine. Otherwise we will ask her -- all this information
10 relates to the witness.

11 THE COURT: Don't take very long. It's on the
12 outer edge of relevant material.

13 (In open court.)

14 BY MS. COTE:

15 Q Ms. McIntyre, showing you Government Exhibit
16 15 for identification, looking at the top half of that
17 piece of paper, is the writing there your handwriting?

18 A It is not my handwriting.

19 Q At the time you quit your job at the Playboy
20 Club were you asked the following questions and did you
21 give the following answers --

22 MR. ANOLIK: I object to that, your Honor.

23 THE COURT: Overruled.

24 MR. ANOLIK: It is not a prior written sworn
25

statement.

Q Were you asked whether or not you had another job and did you answer yes?

A I can't remember.

Q Let me show you what has been marked as Government Exhibit 15 for identification. Read it to refresh your memory, please.

THE COURT: Ms. Cote, in the interest of saving time:

Ms. McIntyre, did you have an interview with anybody where they asked you some questions when you left as to why you left and the circumstances and so on?

THE WITNESS: To tell you the truth, there were a large number of girls who left for the airlines because the club had rumored that it was closing down. A lot -- all of the girls -- most of the girls, I should say, applied. As to whether they were accepted or not was a different thing. There was rumor that it was closing and we all looked for other jobs and the airlines was very popular.

THE COURT: Did you have an interview with anybody at the Club when you left at which time they asked you questions about your working conditions and how you felt about them and so on?

1 THE WITNESS: When I left I took the Bunny
2 mother to dinner as sort of a gesture. I talked to her
3 then --
4

5 THE COURT: Ms. Cote is asking whether at some
6 time you sat down with somebody that asked you questions
7 and they filled out a form while you were giving them
8 answers.

9 THE WITNESS: I don't remember.

10 THE COURT: Objection sustained.

11 Q Ms. McIntyre, did you ever tell anyone that you
12 wanted to be a Playboy playmate?

13 A I don't remember.

14 MS. COTE: No further questions, your Honor.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. JOY:

17 Q In any event you were never a Playboy playmate?

18 A No, I never was, if that is what the problem
19 was.

20 Q A playmate is somebody who appears in the
21 magazine?

22 A A playmate is the center fold and she appears
23 nude in the magazine, yes.

24 MR. JOY: No further questions.

25 THE COURT: Anything else?

1 MS. COTE: No, your Honor.

2 THE COURT: You are excused.

3 (Witness excused.)

4 MR. JOY: Your Honor, that is the defense
5 case with the exception of Pat Thomas: The question as
6 to whether she is black or white.

7 THE COURT: Counsel, don't make any statement --

8 MR. JOY: If the Government will withdraw
9 this picture --

10 THE COURT: I don't want this kind of colloquy
11 in the record.

12 MR. JOY: I would ask for a continuance to
13 call Pat Thomas.

14 MR. ANOLIK: I will join in that.

15 MR. JOY: Unless the Government --

16 THE COURT: That would be the only remaining
17 witness?

18 MR. JOY: Correct.

19 THE COURT: Come up to the side bar.

20 (At the side bar.)

21 THE COURT: Refresh my recollection, but as
22 I recall it she said that was a picture of Pat Thomas.

23 MR. JOY: That's right.

24 THE COURT: What is the basis of your saying:
25

1 pqb

2 "Withdraw the picture"?

3 MR. JOY: The picture has been introduced to
4 show that she looks white.

5 THE COURT: The picture was introduced to
6 show what she looks like as far as I am concerned.

7 MR. JOY: The only relevance it has in this
8 case is the fact is as to whether she is black or white.

9 MS. COTE: Whether she looks black or white.

10 MR. JOY: I think probably the individual
11 is the best evidence.

12 MR. ANOLIK: As the alternative, I would like
13 to put her back on the stand for a couple of questions
14 as to how she looked in April of 1977.

15 MR. BELLER: If you want to call Pat Thomas, we
16 will be delighted.

17 MR. JOY: The Government will not stipulate
18 she is in fact black?

19 MR. BELLER: We have no idea.

20 MR. JOY: You have no idea?

21 THE COURT: Please, please. When can you
22 produce her?

23 MR. JOY: I don't know where she is. The
24 Government does.

25 MR. BELLER: We have the address.

MS. COTE: We will provide whatever information we have, but she is a friend of both defendants. They should have the information as to where she resides. She must have her address, Ms. McIntyre. The Government would be happy to provide any information.

MR. ANOLIK: Ask the questions about Patricia McIntyre. We can accomplish the same thing.

THE COURT: I will allow you to call the defendant.

(In open court.)

MR. JOY: I recall Ms. McMcIntyre.

P A T R I C I A M c I N T Y R E recalled.

DIRECT EXAMINATION

BY MR. JOY:

Q Pat, I show you Government Exhibit 14 in evidence. I believe you have identified that as a picture of Pat Thomas, is that correct?

A That's right.

Q I believe your earlier testimony was that Pat Thomas is in fact of the black race, is that correct?

A That's correct.

Q When you see Pat Thomas in person does she look lighter or darker than that picture?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pqb

McIntyre-direct

599

A She is darker than this.

Q Would anybody mistake her for somebody who was white?

MS. COTE: Objection, your Honor.

THE COURT: Sustained.

Q When you moved in with Pat Thomas, it was clear to you that she was black, is that right, from her appearance?

A Yes.

Q In other words, you didn't have to ask her in order to find out that she was black?

A No.

MR. JOY: I have no further questions.

MR. ANOLIK: No questions.

MS. COTE: No questions.

THE COURT: Thank you very much.

(Witness excused.)

MR. JOY: At this time the defense rests.

MS. COTE: The Government calls Special Agent Fred Sandler.

THE COURT: Ladies and gentlemen, Ms. McIntyre has rested her case and we are on to the Government's rebuttal case.

F R E D S A N D L E R, called as a witness in
rebuttal, having been previously sworn, testified
further as follows:

DIRECT EXAMINATION

BY MS. COTE:

Q Were you present in the United States Attorney's
office on April 29th of this year when Moses Weindling
was interviewed by Assistant United States Attorney McNamara?

A Yes.

MR. ANOLIK: I will object to this, your Honor.
Improper rebuttal.

(At the side bar.)

THE COURT: What are you proposing to rebut?

MS. COTE: Special Agent Sandler was
present when the \$900 that Moses Weindling had on him at
the time of his arrest was handed to Ms. McIntyre on the
evening of April 28th.

MR. BELLER: That is all he is going to testify
to.

THE COURT: That has nothing to do with the
next day.

MS. COTE: The next day Moses Weindling ad-
mitted approximately \$900 on his person at the time he
was arrested. That is merely a way of leading into it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pqb

Sandler-direct

601

MR. ANOLIK: I object to this, your Honor.

THE COURT: What do you say to that? It comes out of the mouth of the defendant who did not take the stand. Is there a problem with that?

MR. BELLER: We will be able to correct that, your Honor.

THE COURT: Proceed.

(In open court.)

Q Agent Sandler, on the 28th of April after the arrest of Moses Weindling, did you take into your custody money that was seized from Mr. Weindling himself?

A Yes, I did.

Q How much money was that?

A Approximately \$900.

Q Do you remember precisely how much it was?

A No, Ma'm. I believe it was \$890 and some change.

Q Did you make a report in which you recorded exactly how much money you seized from Mr. Weindling on that day?

A Yes, I did.

(Government Exhibit 16 was marked for identification.)

Q Let me show you what has been marked as

xxx

Government Exhibit 16 for identification, and I direct your attention to the reverse side of that exhibit and ask you if it refreshes your recollection as to precisely how much you seized from defendant Weindling after his arrest.

A Yes, it does.

Q How much was that?

A \$892.50.

Q Did there come a time after Mr. Weindling's arrest, but also on the 28th of April, when you turned over that money to another person?

A Yes, there did.

Q Who was that person?

A Patricia McIntyre.

MS. COTE: No further questions.

CROSS-EXAMINATION

BY MR. ANOLIK:

Q Agent Sandler, do you know whether or not Ms. McIntyre signed a receipt for the money you gave her?

A No, sir, I don't recall.

Q Do you have a copy of a report that was filed?

A I don't believe I understand the question.

Q You made certain reports in connection with this case, is that right?

1
2 A Yes.

3 Q One of the reports you have just testified to
4 in response to questions by Ms. Cote, you said that
5 you turned over eight hundred -- almost nine hundred dollars
6 to this young lady, Patricia McIntyre, is that correct?

7 A Yes, that's true.

8 Q I ask you now whether or not you have a receipt
9 from her that she received that money?

10 A I do not.

11 MR. ANOLIK: I have no further questions.

12 MR. JOY: Nor do I.

13 THE COURT: Thank you very much.

14 (Witness excused.)

15 MS. COTE: Your Honor, the Government has
16 one more short witness, but who is not available at this
17 moment.

18 THE COURT: I take it after lunch you expect
19 that witness to be available?

20 MS. COTE: We hope so.

21 THE COURT: We will be in recess until 2:15 P.M.

22 (Jury leaves the courtroom.)

23 THE COURT: We have one more witness and
24 I gather then the Government rests?

25 MS. COTE: Yes, your Honor.

pgb

THE COURT: How long will counsel take to sum up this afternoon?

MR. ANOLIK: I probably need about an hour.

THE COURT: Ms.Cote, how long do you need for your summation in chief?

MS. COTE: I think it's about an hour.

THE COURT: Mr. Joy.

MR. JOY: I don't think mine will be that long. Maybe thirty-five minutes to three-quarters of an hour.

THE COURT: And there may be obviously rebuttal by the Government.

MS. COTE: Yes, your Honor.

THE COURT: So we are talking two and a half hours, if we get under way here.

MR. ANOLIK: We have not gone over the requests to charge other than mine. Have you gone over the Government's?

THE COURT: I have looked at the Government's.

MR. ANOLIK: We are entitled to rulings before we sum up.

THE COURT: I assumed you were entitled to rulings on your own.

MR. ANOLIK: On the Government's as well, so I would know what to combat.

1
2 THE COURT: Does anybody have the rule at
3 their fingertips?

4 (Pause.)

5 THE COURT: One is only entitled to a conference
6 with respect to his or her own.

7 MR. ANOLIK: The Government had the benefit of
8 mine without my having the benefit of their, your Honor.

9 THE COURT: Rule 30.

10 Well, all right, we will take the time. I
11 am going to look at the Government's and you may make such
12 objections as you deem appropriate.

13 My problem is this, Mr. Anolik: You may not
14 get to finish all of yours this afternoon. Even holding
15 other people, I have two matters following this case this
16 afternoon.

17 MR. ANOLIK: I would have no objections to
18 summing up tomorrow. The Government does have rebuttal
19 and they can start and have their rebuttal.

20 THE COURT: Mr. Joy goes first. That might
21 work well.

22 We will have the Government's initial one and
23 Mr. Joy's.

24 MR. JOY: I am following the Government.

25 THE COURT: We will plan for the Government to

1
2 make its summation and you to follow the Government,
3 and then we will recess until the morning.
4

5 MR. BELLER: We have a supplemental request
6 which we have shown to counsel.

7 THE COURT: All right.

8 Gentlemen, given the questions about the avail-
9 ability or desirability of bringing Ms. Thomas, is anybody
10 going to argue now the unavailability of Ms. Thomas?

11 MR. ANOLIK: Not unavailability, your Honor.

12 THE COURT: It may be inappropriate to give
13 an equally available charge. We will see.

14 See you after lunch.

15 (Luncheon recess.)
16 -----
17
18
19
20
21
22
23
24
25

(In the robing room.)

THE COURT: Ms. Cote, I understand you have a witness available.

MS. COTE: He is a police officer and he is on duty, but we have been told he is on his way. We expected him at two o'clock. He has not arrived yet.

THE COURT: That gives us a second or two. This is an officer that saw the scale at some time in the defendant Weindler's apartment?

MS. COTE: Seized it in the apartment on September 30, 1976.

THE COURT: You argue since it was there to be seized that Ms. McIntyre must have seen it on some occasion in and around that time?

MS. COTE: Yes, your Honor.

MR. ANOLIK: Did they have a search warrant for the apartment?

THE COURT: When does your proof show, if credited, that she began keeping company with him?

MS. COTE: I believe she said the second day in New York, which would be September 12, from her testimony.

MR. BELLER: She also said she was in the apartment and September 30 was the last day that he was

1 in the apartment. The proof doesn't necessarily have
2 to show, but we know September 30 was the last day he
3 was in this apartment. These were eviction proceedings
4 essentially.
5

6 MS. COTE: It was a lease dispute in which
7 they summoned the police to help them resolve it.

8 MR. BELLER: The landlord did.

9 MR. ANOLIK: Who summoned the police?

10 MS. COTE: Defendant Weindling.

11 Perhaps the co-owner of the apartment summoned
12 the police.

13 MR. JOY: He had a roommate.

14 THE COURT: Somebody picked up the scale.

15 MS. COTE: The scale was on the table which
16 had a quantity of marijuana. Defendant Weindling went
17 to put the marijuana in his pocket at which time this
18 police officer and a sergeant who was accompanying him entered
19 into a conversation regarding the marijuana and eventually
20 placed defendant Weindling and the other person under
21 arrest for possession of drug paraphernalia.

22 MR. ANOLIK: Wasn't that ultimately dismissed?

23 MS. COTE: The Court papers were lost, and
24 as far as I know there was no ultimate outcome to the case.
25 However, Ms. McIntyre accompanied Mr. Weindling to some of

the court appearances, I believe, relative to that case and is familiar with it.

MR. BELLER: We don't intend to offer anything about an arrest; just the fact that he was in the apartment and he saw it and he took it and this is the same scale.

THE COURT: Any problems with that?

MR. JOY: Again the objection that I have been making all along to the Government introducing collateral material, proving it by extrinsic proof, namely now calling a police officer to testify that he saw this scale in the apartment. That is an entirely collateral matter.

MR. ANOLIK: That doesn't mean she saw it.

MR. JOY: I think the probative value of it is far outweighed by the bad effect -- this has nothing whatever to do with this trial. This is back six months. It's like saying, "Do you see this picture on the wall?" And she says, "No, I don't remember that picture," and you get somebody then to come and say that picture was hanging in the apartment, therefore she is a liar. I just don't think that is what the rule contemplates.

MR. ANOLIK: I agree. I don't see how it is binding on her in any event, and how they can get it in against him on that basis. She denied seeing it.

1
2 THE COURT: She said two things which if
3 credited that warrant acquittal of both defendants. One
4 is, "We not only didn't sell this dope, we never sold
5 any dope," and "I never saw Moses selling any dope, he
6 never talked to me about selling any dope. He had some
7 for his personal use, and that's it."

8 It seems to me that this scale arguably makes
9 her, if the scale is credited, a liar because it is
10 a scale used to measure narcotics in substantial quantities.

11 MR. ANOLIK: It could be. I agree with you.
12 It could be, but it could be used for something else.

13 THE COURT: If she is taking the position,
14 "I never saw him involved in this. He was not involved
15 in it to my knowledge. I was not involved in it, and I
16 never saw a scale that could be used for wholesaling of
17 narcotics", and somebody comes along and says, "Lady,
18 it was sitting there on the table" --

19 MR. ANOLIK: Not on the day she was there.

20 THE COURT: In the period when she was there.
21 It's a jury question.

22 MR. ANOLIK: I respect your Honor's trying
23 to be fair to both sides, but it seems to me, your Honor,
24 that on this one visit that if you now confront her with that
25 scale and say, "How could you have missed this when the

1 pgb

2 police came in on a different day and saw it in such and
3 such a place?" How is that possibly probative of the
4 fact that she saw it on that one visit and therefore she
5 is a liar?

6 THE COURT: It's a jury question.

7 MR. ANOLIKE: I don't think it is.

8 MR. JOY: That is what the rules mean by
9 "collateral". And that is where the rules specifically
10 states that while the question may be asked in the Judge's
11 discretion, that is extrinsic proof, and if your Honor
12 will look at the cases, extrinsic proof includes both
13 documentary as well as live testimony, that it may not
14 be proved in that way.

15 THE COURT: If Moses Weindling had a cocaine
16 scale in his apartment is that collateral?

17 MR. ANOLIK: Yes.

18 THE COURT: Where he is charged with conspiracy
19 to sell cocaine?

20 MR. ANOLIK: Yes, your Honor. It appears
21 to me that leading case in New York, I think the rules
22 are the same, is People against Sorge, 301 N.Y.

23 THE COURT: I would only credit that case
24 if you didn't have a Federal case.

25 MR. ANOLIK: I don't recall the citation of

1 pgb

2 the Federal case. I know the rule is similar in the
3 Federal courts.

4 THE COURT: What does the Government say to all
5 this?

6 MR. BELLER: I have one thought on the
7 argument about extrinsic proof. Assume for the moment
8 that is what it is, that it is extrinsic evidence of some-
9 thing else, if she had said, "I never told anyone that
10 Moses Weindling sold narcotics", according to Mr. Joy's
11 theory we are bound by that.

12 We could not call on rebuttal
13 someone to whom she said "Moses is selling narcotics".
14 That is clearly preposterous and that is getting into all
15 the summations Mr. Joy is making about the scale. That is
16 what this is. She said Moses Weindling said he doesn't
17 sell narcotics. What the rule says about not proving
18 extrinsic matters, it has to be collateral. It has to be
19 something not relating to the charges here. As we know
20 from U.S. vs. Mouton, it has no cite, but it is September
21 6, background activities and actions are relevant to
22 prove the present charge.

23 MR. ANOLIK: If it is binding on them.

24 MR. BELLER: I don't think that anything
25 that has been said here goes to the admissibility of the

scale. That is something that was seized in his apartment. They can argue it was used to weigh postage or for flour. We are going to argue it was used for drugs. She says she didn't see it. The policeman will say it was in plain view.

MR. ANOLIK: It is a different day. You can't show a remote occurrence and have it binding on her.

MR. BELLER: That is a matter of argument.

MR. ANOLIK: It could have been put there the day before.

MR. JOY: How did you know when he got it? It is like saying --

MR. BELLER: She arrives in New York on September 12. This is September 30. I think they can say he got it on the 30th.

MR. ANOLIK: It is like saying if they found narcotics in his apartment on January 20, 1977, and she said she visited the apartment on December 4, 1976, "Oh, well, it's obvious you are involved in the conspiracy because we found it there in January".

That ridiculous! This scale could have been brought there two minutes before they came in, for all we know. How can they possibly say it is binding on him or her? They are trying to get this in as a physical

admission without the benefit of any evidence whatsoever.

THE COURT: When was this observed by the police?

MS. COTE: September 30.

THE COURT: When had she been in the apartment?

MR. BELLER: She came to New York on September 16, either the 12th or the 16th. Since he was not there after the 30th, she was in the apartment some time between --

THE COURT: It is fourteen days we are talking about.

MR. JOY: When was the scale brought there?

MR. ANOLIK: It could have been one hour or one day before they came.

MR. BELLER: Or twenty years or one year.

MR. ANOLIK: We have no right to speculate and use that as evidence against two young people in a case of this sort.

THE COURT: Let's assume I conclude that you may; what is the form the proof is going to take?

MS. COTE: A simple question putting this officer in the apartment at York Avenue and asking whether or not he recognizes this scale.

One more fact, that Moses Weindling was present

in the apartment.

MR. ANOLIK: That is binding on her because she testified?

MR. JOY: Completely outside. It's completely collateral to this inquiry.

MR. ANOLIK: If my client had testified I could understand this being done. My client did not testify. This is being admitted against my client and not against her, and there is no doubt about that. It does not have anything to do with her.

MR. BELLER: There is a misleading aspect to the notion that Weindling had no case here. The fact is that Weindling's case was put in. He had a witness on the stand just as much as he had called her himself. She was there testifying in his behalf. Mr. Anolik got an advantage that he was able to at least lead because --

MR. ANOLIK: That is a cute argument.

THE COURT: Mr. Anolik, I intend to agree with Mr. Beller. You had the advantage of her as a witness on your behalf and you had her as a witness.

MR. ANOLIK: Why should I not?

THE COURT: Obviously you are not questioning her for anybody else.

MR. ANOLIK: Assume they had an informant, as

1 we had in Mouton. If you have a witness that disappoints
2 the Government and starts testifying for the defense
3 instead, called by the Government, does that make him
4 my witness? It does not any more than Ms. McIntyre is my
5 witness.
6

7 THE COURT: You are utilizing her testimony
8 for your client.

9 MR. ANOLIK: That doesn't mean that my client
10 is testifying and you can introduce evidence against him.

11 THE COURT: I will see you all out front.
12 I will have to resolve this problem.

13 MR. JOY: Your Honor, you don't want to talk
14 about any of these --

15 THE COURT: Maybe I should do that if the
16 witness is not here.

17 MR. JOY: The only request I have is that since
18 the crux of this matter as far as the conspiracy and the
19 aiding and abetting charge is whether she consciously
20 participated and made the enterprise her own. I don't
21 know whether your Honor intends to give both the aiding
22 and abetting charge and the conspiracy charge, but if your
23 Honor does, I think that it would be helpful to the jury
24 if you could, since that is really the central issue as
25 far as she is concerned, whether she actively --

1 THE COURT: I not only give both --

2 MR. JOY: If you can put them together.

3 THE COURT: I don't do that, but I give the
4 same comment about them each time.

5 MR. JOY: Also in the Government's statement
6 of its contentions, that contain a quote of what was
7 supposedly said by my client: "Don't worry, it's not in
8 the bag", which I don't think is an accurate statement of
9 what was said. I think the witness said, "Don't worry,
10 there is nothing in the bag", or something to that effect.

11 MR. ANOLIK: That is what I remember.

12 MR. JOY: I think --

13 MS. COTE: The Government would be willing to
14 have that changed to "Don't worry, there is nothing in
15 the bag."

16 THE COURT: My notes read, "I don't have
17 anything in it".

18 MS. COTE: Is that Ms. McIntyre or from
19 Officer Rinaldi? I was quoting Officer Rinaldi.

20 THE COURT: That is Ms. McIntyre. "Do you have
21 anything in your pocketbook?" And Ms. McIntyre, "I don't
22 have anything in it."

23 Rinaldi says: "They got the pocketbook."

24 She: "There's nothing in the pocketbook."

1
2 MR. JOY: If your Honor refers to that
3 at all, which I don't think really talks about -- in terms
4 of contention -- I don't think it ought to be in there.
5 Whatever your Honor says is going to carry a considerable
6 amount of weight with the jury.

7 THE COURT: Let's take the Government's re-
8 quests.

9 MR. ANOLIK: The first request, your Honor,
10 obviously there is a misprint there.

11 THE COURT: Hold on. Most of these I give in
12 substance.

13 MR. ANOLIK: They say heroin. They don't mean
14 heroin.

15 THE COURT: I will not say heroin either.

16 I give Request Number 2 in substance.

17 Where do you have problems? Most of these
18 things I give in substance. Over the years I put them
19 in my own language. Where do you have a problem and I
20 will address that and maybe I won't give it at all?

21 MR. ANOLIK: Languagewise I have a problem,
22 but if you are not going to give it hoc verba, I am not
23 concerned.

24 THE COURT: I give the conspiracy charge.

25 MR. ANOLIK: I object to that aspect which

1
2 talks about Congress having determined. Congress enacted
3 all statutes and I think it is unfair to refer to the
4 conspiracy as an act prohibited by Congress. I usually
5 object to that aspect of any conspiracy.

6 MS. COTE: I don't think it is.

7 THE COURT: It is not, but I have it in mine.
8 I say that all laws flow from acts of Congress.

9 MR. ANOLIK: Many Judges say it. It is
10 undue emphasis on conspiracy as apart from substantive
11 crimes.

12 THE COURT: Your objection is noted.

13 Let's go ahead.

14 Tell me where you come to something you have
15 a problem with.

16 MR. JOY: Request Number 7, your Honor. I
17 wonder if your Honor could say the second paragraph on the
18 page, the second sentence, mere knowledge and so forth,
19 could your Honor add: Were present when the alleged act

20 THE COURT: I have that in.

21 MR. ANOLIK: I would ask you to consider the
22 recent case of United States against Rosenblatt where
23 you have to have established not only a general conspiracy
24 to violate the law, but they have to describe in what
25 manner they intended to violate the law.

1
2 The Rosenblatt case came down three or four
3 months ago, and they reversed a conviction on the grounds
4 that all the Trial Court charged was the fact that there
5 was a conspiracy to violate the laws of the United States
6 pertaining to so and so and didn't go into specific
7 details in what manner they violated those laws. They
8 said that was insufficient to charge a violation of the
9 law, United States against Rosenblatt. I don't think
10 it has been officially reported yet.

11 MS. COTE: Your Honor, I believe Request
12 Number 5 is fairly specific about the objects of the con-
13 spiracy, that there is a conspiracy to distribute cocaine,
14 to possess it and intent to distribute it, and the further
15 definition --

16 THE COURT: I read the indictment and I read
17 the overt acts.

18 MR. ANOLIK: When the case closes completely,
19 I intend to address a motion along the lines of Rosenblatt.

20 I object to the phrase of Request Number 8:
21 "Extended participation." I think they have to show along
22 the lines of Falcone and cases of that sort that they
23 understood what they were doing, they did it with intent,
24 knowledge, wilfulness, and that they made the conspiracy
25 their own.

1
2
3 THE COURT: I understand that.

4 MR. JOY: Am I correct, your Honor -- again
5 after the case is closed, I will make the motion -- as
6 far as the sample, not the three and a half ounces that
7 was allegedly transferred in the Grass Restaurant -- my
8 client's liability for that, is that based on an aiding and
9 abetting theory? Is that a Pinkerton theory that she is
10 liable for that or is that something more direct?

11 THE COURT: I think she is the one who said --

12 MR. JOY: She tried it out last night? That
13 was the three and a half ounces.

14 THE COURT: There was a statement made in her
15 presence, according to the agent, that the sample had come
16 from the three and a half ounces, that she has an awareness
17 of the fact --

18 MR. JOY: I see. That the sample came from the
19 three and a half.

20 THE COURT: According to the Government theory
21 she brought the package up from the basement in her hand-
22 bag.

23 MR. JOY: There is no testimony that she brought
24 the sample.

25 THE COURT: But the sample, who cares from the

Government's point of view where the sample came from?
That was the forerunner of three and a half which she is
charged with.

MS. COTE: The Government contended she was
there and participated in a conversation about that sample
and the way it related to the three and a half ounces.

THE COURT: I don't think it is a Pinkerton
theory.

MR. ANOLIK: With respect to Request Number 11,
I did not include a request because of what your Honor
told me Friday that you intend to charge that mere
possession for personal use --

THE COURT: I have that in here.

MR. ANOLIK: Very good.

The last page of Request Number 13, I didn't
like their definition of proof or knowledge and wilfulness.
I like the one you had used previously. If you would
use that I have no objection.

THE COURT: Let's see how it comes out.

MR. ANOLIK: I am always concerned about hoc
verba.

THE COURT: I understand.

Anything else?

MR. ANOLIK: Number 16.

1
2 THE COURT: I never give 16.

3 Let's knock this off here and we will take some
4 more testimony.

5 (Pause.)

6 THE COURT: I am going to exclude the officer's
7 testimony for two reasons: (1), I am not completely
8 satisfied that at that stage, early stage in the relation-
9 ship, Moses would have been prepared to have her see the
10 scale and may have put it in a box and put it in the
11 closet. I am not confident he would have left it out
12 twenty-four hours a day. It is a two-week period. If it had
13 been five minutes before or ten minutes before -- I take
14 it you were going to rest your case where it presently is?

15 MS. COTE: Yes.

16 MR. ANOLIK: I have no surrebuttal.

17 THE COURT: Do you have motions?

18 MR. JOY: Your Honor, I renew the motion I
19 made after the Government's case for a judgment of acquittal
20 on all counts as to my client, Patricia McIntyre. The
21 Government has shown an insufficient amount of proof
22 to enable this case to go to the jury and in particular in
23 the count relating to the passing of the -- I think it is
24 Count 3 -- relating to the passing of the cocaine allegedly
25 taken out of the boot of the defendant Weindling. I see

1 absolutely no basis whatever to ascribe that to her, that
2 she aided and abetted or did anything with regard to that
3 particular bit of cocaine. So I think clearly that there
4 is nothing whatever to support a charge that she is guilty
5 of that substantive crime of aiding or abetting or
6 actually passing or possessing with intent to distribute
7 that particular cocaine.
8

9 THE COURT: Do you want to respond to that
10 briefly?

11 MS. COTE: The Government contends with respect
12 to the second sample Ms. McIntyre was in the presence of
13 Moses Weindling when it was passed to Detective Minichiello
14 and contributed to a conversation concerning both that
15 sample and the three and a half ounces that took place at
16 that time. Specifically she contributed to the conversa-
17 tion in which it was represented to Detective Minichiello
18 that the second sample was out of the same package as
19 the three and a half ounces. At this point Ms. McIntyre
20 assured Detective Minichiello that the cocaine was of high
21 quality since she had tried it the night before and had
22 injured her nose.

23 With respect to the conspiracy charge, the
24 Government contends that a number of the overt acts
25 link her to the overall conspiracy in this indictment.

1
2 THE COURT: Mr. Joy, is the testimony as
3 you recall consistent with what you have heard here?

4 MR. JOY: It seemed to me -- and I of course
5 am fallible -- that the testimony was that the three and
6 a half ounces, there was testimony she said it was great
7 stuff and she had tried it the night before and had injured
8 her nose. But as far as the actual sample that was passed,
9 I don't believe that -- I don't recall the testimony
10 relating to that as far as she is concerned, that she had
11 anything whatsoever to do with it. Her statement related
12 solely to the three and a half ounces.

13 THE COURT: I am looking here to my notes that
14 Weindling gave the package. He guaranteed the sample was
15 the same quality and the sample had come from the package.
16 McIntyre participated in the conversation, said, "Tried
17 out package the night before", and pointed to discolora-
18 tion of nose.

19 MR. JOY: That is the three and a half.

20 THE COURT: That is the sample. The sample had
21 been transferred at that point as part of the overall deal.

22 MR. JOY: Even if the sample had come from the
23 lot that they had the night before that had been divided,
24 we will say, by somebody, and then given by Moses, I
25 don't see how she could be liable for the substantive crime

1 of aiding and abetting the passing of it because she has
2 not been shown to do anything other than to remark "The
3 three and a half is good". The conspiracy there is no
4 problem.
5

6 THE COURT: But if he and she are together in
7 trying to market the three and a half, she is therefore
8 a participant in the giving of a sample. She is an aider
9 and abettor in giving the sample as a step along the
10 way of the marketing of the three and a half.

11 MR. JOY: Then it is the same thing as the
12 sample given the night before. What's the difference?

13 THE COURT: I don't have that question in
14 front of me.

15 MR. JOY: I would submit the reason you don't
16 have it before you is because there is no proof -- she
17 certainly was not even there for that. Here she was there,
18 but she didn't do anything.

19 THE COURT: I will deny your motion.

20 MR. ANOLIK: Your Honor, I will renew my
21 motions as made previously, again on the entire case.

22 Your Honor, I don't believe that the quality
23 of the testimony considering only Minichiello really
24 testifies with respect to any transaction here, and that
25 in view of the fact that no three and a half ounces were

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

627

ever found, based upon that type of testimony I don't feel you should permit this case to go to the jury under United States against Taylor. I move to dismiss under Rule 29, and ask for a judgment of acquittal.

Also on United States against Rosenblatt, I don't believe that the indictment or the proof here is specific enough as to what the defendant specifically is alleged to have done other than a general allegation that he sought to violate the narcotics laws with respect to the cocaine, distribution of cocaine. I think the Government has to be more explicit.

THE COURT: Those motions are denied.

Shall we continue with our charge thing, and then we will get the jury in?

MS. COTE: I apologize. I left the charges outside.

MR. ANOLIK: We are up to 19. I would object to that, your Honor. I think it is confusing and would lead to speculation.

MS. COTE: It is difficult to evaluate that request without hearing exactly what arguments will be made in summation.

THE COURT: I will hang on to it then.

Anything else?

pgb

MR. ANOLIK: Uncalled cumulative witnesses --

MR. BELLER: Other surveillance agents.

MS. COTE: It depends on what arguments are made in summation regarding other surveillance agents or people who overheard admissions of the defendants.

MR. ANOLIK: His Honor would have to determine what he feels is cumulative.

THE COURT: It is a question of what you argue.

MR. ANOLIK: If I say for example -- and I assume the case is over now -- why wasn't Steve called? I don't care if they say I had the right of subpoena. That is an argument I can meet, but I don't think he should be called merely a cumulative witness.

THE COURT: I understand.

Let's go to the supplemental charges.

MR. BELLER: Charge 21, use of informant, it doesn't go to whether he testifies or not, it goes to his being used in the case. It really says that they should not consider the policy of using informants. It is none of their business.

MR. ANOLIK: We have not raised the issue of entrapment.

MR. BELLER: This has nothing to do with that. There has been a lot of testimony about why informants

are searched. They are searched because they don't
rely on them. These are people that try to work off cases.
We ask that that be given.

MR. ANOLIK: I would ask that the same language
not be used.

THE COURT: All right.

How about the supplementary requests?

MR. ANOLIK: This is on distribution you are
talking about?

THE COURT: They have several here.

Is there any problem that you have with any
of these?

MR. ANOLIK: I don't like the language of
Request Number 1. I have a lot of things written in in
ink.

THE COURT: I do.

MR. ANOLIK: It seems very cumbersome language
to me. I don't mind a general charge on distribution.

THE COURT: I will cut it down a bit. You
don't have a specific objection?

MR. ANOLIK: No, your Honor.

Who are they talking about as to co-conspirators
on 2?

THE COURT: There has been evidence of a brunette.

1
2 MR. ANOLIK: She is not a co-conspirator.

3 THE COURT: She is the one that had the package
4 in the restaurant before putting it in their possession.

5 MR. ANOLIK: There has been no testimony as
6 to that. All they say is that a brunette followed her
7 to the bathroom.

8 THE COURT: Didn't Minichiello say that Weindling
9 said that "The stuff is here in the restaurant but not with
10 us"?

11 MR. ANOLIK: Not with the brunette.

12 THE COURT: He said, "It's here but not with us,"
13 and at some appropriate time it would be made to appear.

14 MS. COTE: He had to pay \$50 to have someone
15 in the restaurant --

16 MR. ANOLIK: That is speculative. I would
17 not want you to mention the brunette. I don't think
18 they can infer that was the brunette. It could have been
19 left in the bathroom behind a toilet bowl.

20 THE COURT: But Ms. Jeronimo said they were
21 talking downstairs just before. Presumably the jury
22 could conclude the stuff came up in a bag.

23 MR. ANOLIK: She could have had it all the
24 time.

25 THE COURT: I am not so sure Jose is also

1 a conspirator on this testimony. He may be the person
2 from whom the stuff entered the conspiracy.
3

4 MR. ANOLIK: Jose is a male name.

5 THE COURT: Is there more than that?

6 MS. COTE: He was referred to as the source
7 of the cocaine.

8 MR. JOY: If you are going to put in the
9 brunette, put in Jose.

10 MR. ANOLIK: I object to the brunette.

11 MS. COTE: Patricia Thomas. Would that be
12 all right?

13 MR. ANOLIK: There is no proof she was there.

14 THE COURT: There was a woman in the ladies'
15 washroom. How are we going to describe her? The
16 tanned woman with the dress with lots of jewelry? How
17 are we going to describe her?

18 MR. ANOLIK: Your Honor, I like to be a little
19 euphamistic on that. "The brunette" is almost conceding
20 that is the person. It bothers me --

21 MR. JOY: I think the Government has tried
22 to create that general inference. I don't think there
23 has been any proof.

24 MR. ANOLIK: If you want to say another woman,
25 but why the brunette, and zero in on that?

MR. BELLER: That is what the evidence is. Our evidence relates to this brunette woman who went downstairs who was seen by Jeronimo and to whom Ms. McIntyre was speaking. That's what the evidence is. Why don't we call --

MR. ANOLIK: I object to the word "brunette".

THE COURT: If you should find that there was another woman in the restaurant or that the man referred to as Jose were also co-conspirators --

MR. ANOLIK: Sure.

MR. JOY: -- that is better.

THE COURT: All right.

MR. ANOLIK: Number 3, your Honor. I stated --

THE COURT: Let's see where you are at after the summations.

MR. ANOLIK: You want to wait now?

THE COURT: We will see what the spirit of the summations will be.

MR. ANOLIK: I understand you.

MR. BELLER: We may want to argue that she was available to them to call in our opening summation. I gather we are allowed to do that?

MR. ANOLIK: Except you put an onus upon someone to call someone. My client has not taken the

stand.

MR. BELLER: We all know the cases that say even if the defendant doesn't take the stand you can't get up and argue that a witness was available to her.

MR. ANOLIK: No, no. The law is that a defendant need prove nor disprove anything. For him to say, gives the jury the impression that we were obligated to call someone otherwise we are forever foreclosed. That's an improper --

MR. BELLER: The only thing we are not permitted to do is comment on evidence that only a defendant could have testified about. That's the only thing.

MR. ANOLIK: I disagree with you.

THE COURT: Call that citation into my chambers.

MS. COTE: I have it outside.

THE COURT: Give it to me at the end of the day and I will take it upstairs.

MR. JOY: I think it is Traumonte. There was a guy sitting in the courtroom, the defendant's brother. Here, to take somebody that the Government has interviewed, and says "We should have called her", I think that infers that we have to put on some kind of proof, which is not the law, as I understand it.

THE COURT: Let's see how the dust settles in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pgb

634

summation.

How about the contentions? Any problem with that?

MR. JOY: Was there a revision of the contentions?

THE COURT: In one respect.

MR. JOY: There was a thing about the contentions that I thought was handwritten. Maybe I am wrong.

THE COURT: There is nothing in the pocketbook.

MR. JOY: I wonder whether in giving the Government's contention it is necessary to review the evidence. Their contention is that she aided and abetted this transaction. I don't think your Honor ought to comment on a particular piece of evidence.

THE COURT: I think this is appropriate. I won't give it in the form it is.

Anything else? You are all set?

MS. COTE: Yes, your Honor.

THE COURT: Bring the jury in.

(In open court; jury present.)

THE COURT: Thank you for your patience, ladies and gentlemen.

Before Ms. Cote begins, I wish to say that all sides have rested. The proof-taking has been done. We

will now go to summation of counsel.

The Government will sum up first.

MR. JOY: Excuse me. One thing about the scale. It is not in evidence. I don't know that the jury is aware of that.

THE COURT: It was not offered before. That is where we are at.

The Government sums up first and then each of the defendants will sum up to you, not today, but some of it will go over to tomorrow morning, and then the Government will have a rebuttal summation. I will charge you on the law probably in the middle of the morning or late morning tomorrow.

(continued on next page.)

pgwis2

MISS COTE: May it please the Court, your Honor, Judge Owen, and ladies and gentlemen of the jury:

We are nearly at the end of the trial. All the evidence is in. It has been a brief case, but it has been an important one. It is important to the defendants because they are charged with serious crimes, and it is important to the Government who has an interest in protecting the public against the kind of crimes they are charged with. It is exactly in courtrooms like this that those two interests are weighted and both of them are protected.

That's why we have a jury system. That's why now the attention in this courtroom shifts. It shifts quite dramatically away from this side of the jury bar to that side, to you, the fourteen jurors.

We all have special skills that we bring to this courtroom. We, the lawyers, have special skills in presenting the facts to you and in posing questions to the witnesses. Some of us have developed those skills mainly from law school; others through years of practice before the bar. We have done our work. It is pretty much over for us except for these summations.

His Honor, Judge Owen, has his own special skills, skills that he has used to supervise and conduct

1 this trial, to rule on difficult questions of law that
2 always present themselves in criminal trials.

3 Right now the most important skills in this
4 courtroom are the skills that each of you possesses, that
5 each of you has brought into this courtroom at the time
6 you came here, and that is your good, basic, common sense.
7 That's why you were selected, and it is on that common
8 sense that you are going to rely to reach a verdict in
9 this case.

10 In fact, that's exactly what you are bound to
11 do by your oath. You are bound by your oath to decide
12 this case clearly on the evidence, to apply your common
13 sense to the evidence that has come in during this trial,
14 and to reach a verdict that is fair under the law, a
15 verdict without fear, prejudice, influence, or sympathy --
16 sympathy for either the defendants or the Government.
17 That's what the Government asks you to do, and I am sure
18 it is what each of the defense attorneys ask you to do.

19 What is the evidence in this case? You know
20 that the evidence in this case is not the questions the
21 lawyers have asked. You know that it is not the opening
22 statements. What I told you in my opening statement, that
23 was not evidence; that was merely an outline of what the
24 Government intended to prove at this trial. What the
25

1 defense attorneys said in their opening statements, that's
2 not evidence, either.
3

4 So, when Mr. Anolik told you in his opening
5 that Mr. Weindling became addicted to cocaine when he was
6 in the army, that's not evidence. There is no evidence in
7 this record at all that Mr. Weindling even used cocaine in
8 the army.

9 In fact, Miss McIntyre told you that Mr.
10 Weindling used cocaine whenever he felt like it in her
11 presence, and yet she didn't even know he was using cocaine
12 until after she had been living with him for two months.

13 Similarly, when Mr. Joy said in his opening
14 that Miss McIntyre was just one of Mr. Weindling's girl-
15 friends, that's not evidence. In fact, there has been no
16 evidence that Mr. Weindling even dated anyone else, much
17 less had another girlfriend. So those openings are not
18 evidence, and neither is this summation evidence.

19 What I am going to try to do in this summation
20 is to give you a picture, a picture of the evidence as the
21 Government sees it. I am going to tell you what my
22 recollection of the evidence is, what my recollection is of
23 what the witnesses testified to; it is my explanation of
24 the Government's view of the whole case put together.

25 Similarly, the defense attorneys who sum up,

1
2 what they say is not evidence, it is argument; it is part
3 of each attorney's special skill.

4 You have to apply your common sense to the
5 evidence, and the evidence in this case is made up among
6 other things, of testimony. You heard from a New York City
7 detective who worked undercover in this case, and you heard
8 from four agents and officers of the Drug Enforcement Task
9 Force who watched these two defendants as they participated
10 in the three drug transactions. You heard from those same
11 agents and officers as they testified to the statements
12 the defendants made after they were arrested. You heard
13 from the DEA chemist and the waitress who saw Miss McIntyre
14 talk to a brunette in the Grass Restaurant, and you heard
15 from Miss McIntyre. What they testified to, all of that,
16 is evidence. Evidence is the chemist's report, the cocaine
17 spoon, the briefcase, the strainer, the handbag Miss
18 McIntyre carried to the Grass Restaurant, and the jumpsuit
19 Mr. Weindling wore at the Grass Restaurant, and it is also
20 the picture of Miss Thomas.

21 I think the Judge will tell you that you have
22 a right to all of the exhibits in this case. You can ask
23 to see them in the jury room. The Government would ask
24 that you do so because it is only on the evidence that you
25 can reach a verdict in this case.

1 pgwis6

2 What I am going to try to do --

3 MR. ANOLIK: Objection, your Honor. Objection
4 -- or lack of evidence.

5 THE COURT: Evidence or the lack of evidence.
6 Proceed.

7 MISS COTE: What I am going to do in
8 this summation is try to bring all the pieces of evidence
9 together, because they came into evidence not necessarily
10 in any chronological order. You remember the testimony of
11 Miss Jeronimo. She was one of the last Government wit-
12 nesses called. She testified to seeing Miss McIntyre in
13 the bathroom at Grass Restaurant before Miss McIntyre was
14 even arrested. But you had already heard about those
15 arrests far earlier in the testimony, so what I will try
16 to do is put all the evidence together so that it all
17 makes sense and you can see it as a whole.

18 I want to tell you just before I begin that in
19 commenting on the evidence, a piece of testimony in the
20 record, I may make a mistake, and when I say "a mistake,"
21 I mean something I say may be different from the way
22 you remember it; it is your recollection of the evidence
23 that always controls. So if that happens, I want to tell
24 you, it is inadvertent. It is simply an error on my part,
25 a mistake of my memory; but you do know there are verbatim

1 pgwis7

2 notes of these proceedings and you have a right to ask
3 that any section or portion of the trial be read back to
4 you. Just send a note out and it will be done.

5 Simply put, this case has been about three
6 different drug transactions that took place last April.

7 On April 27th, at the Sixish Restaurant, Moses
8 Weindling gave this sample of cocaine to Detective
9 Minichello. That is Government Exhibit 1 and it is in
10 evidence. After he gave that sample of cocaine to
11 Detective Minichello, he called Patricia McIntyre and had
12 her join him as he negotiated the sale of three and a half
13 ounces of cocaine for the following day.

14 Miss McIntyre was not just present during
15 those negotiations. She participated because part of the
16 price for that three and a half ounces was to be made up
17 by money to be placed on the number 357 every day for a
18 month. She contributed that number, the number 357.

19 On the next day, Moses Weindling and Patricia
20 McIntyre together went to Grass Restaurant, and together
21 they gave a second sample of cocaine to Detective
22 Minichello. That second sample is also in evidence; it is
23 Government Exhibit 2. They gave him that sample in lieu
24 of the package, in lieu of the three and a half ounces,
25 which was not in the restaurant yet.

1
2 After lunch, Miss McIntyre went and got that
3 three and a half ounces, and she carried it in her purse
4 back to the table and gave it to the defendant Weindling.
5 The defendant Weindling opened that purse and gave it to
6 Detective Minichello, and that's the third transaction.

7 After Detective Minichello looked at the three
8 and a half ounces, he gave it back to Moses Weindling,
9 left the table, and gave the arrest signal. Miss McIntyre,,
10 at that point, got rid of the package, and following their
11 arrests, each of the defendants made admissions with
12 respect to their role in this conspiracy.

13 How has the Government proved all of this to
14 you? Well, to begin with, you heard from Special Agent
15 Sandler, how he met an informant who worked for the Drug
16 Enforcement Administration about a month before these
17 events in April began, and that informant told Agent
18 Sandler that he could introduce someone to Moses Weindling,
19 Moses Weindling, who was both a user and a dealer in
20 cocaine.

21 I think it is appropriate for me to pause at
22 this moment and address myself to what is one of the so-
23 called defenses in this case, and that is that Moses
24 Weindling is merely a user of cocaine. Moses Weindling is
25 not on trial here because he uses cocaine. That is not the

crime charged in any of the counts in this indictment. The government submits it is not a defense to any of the charges in this indictment.

There is no evidence -- and I want to stress this to you -- in this record that Moses Weindling was so unable to form the necessary intent to commit the crimes charged here because he used cocaine. In fact, I will ask you to really step back from it and think about it. Look at the evidence and ask yourselves this: Doesn't the fact that Moses Weindling is a user of cocaine really give him both a motive and an opportunity to indeed be a seller of cocaine?

First of all, cocaine is expensive. There is no doubt about that. To pay for cocaine it makes sense to buy extra, cut it, and sell it at a profit. If you are a user of cocaine, you have a source. It does not fall from the sky; you get it from somewhere, so you already know where to get it.

So this defense put forth by Mr. Anolik, the Government submits, is not really a defense at all. It is really a sort of admission. Mr. Weindling had both the motive and the opportunity to commit the crimes with which he is charged in this indictment.

So I ask of you, don't be misled by any argument

1 about Mr. Weindling being a user of cocaine. That is not
2 in issue here.

3
4 Now, to get back to the evidence, the actual
5 evidence, in this case.

6 You heard how Detective Minichello was chosen
7 to assume an undercover role to purchase cocaine from
8 Moses Weindling. He was chosen because it is a policy not
9 to have the informant handle any drugs; so on April 27th
10 that informant came to the DEA, the Drug Enforcement
11 Administration officers, and attempted to reach Moses
12 Weindling on the telephone. He was unsuccessful.

13 So the informant with Detective Minichello
14 and Agent Sandler get in a car and they go to the Upper East
15 Side, and there he, again, makes a phone call; this time he
16 gets through to Moses Weindling and they arrange to meet at
17 the Sixish Restaurant.

18 Shortly thereafter the informant and Detective
19 Minichello arrive at Sixish Restaurant. They wait a few
20 minutes, and then Moses Weindling enters. After the
21 preliminaries, they get down to business, and the business
22 is the sale of cocaine.

23 At that point Moses Weindling gives Detective
24 Minichello the sample, Government Exhibit 1, to induce him
25 to buy a large, a much larger, quantity of cocaine. This

transfer in and of itself, the transfer of this sample of cocaine, is a crime. That is the crime charged in Count 2 of this indictment.

After Moses Weindling gave Detective Minichello that sample, he told him to check it out, gave him his own cocaine spoon, and from the description that Miss McIntyre gave you, the coke spoon she used last January when she tried coke, maybe it was the same coke spoon, so Detective Minichello goes to the bathroom. You heard him: he puts the coke spoon in the sample so if it should be inspected it looks like it has been used. He returns to the table and carefully following procedure makes sure that when Moses Weindling says to the informant, "You check it out," that he hands him the coke spoon but not the cocaine. He kept control of that cocaine, and you have it here.

After the informant had tried the cocaine and supposedly that's what Mr. Weindling had thought was going on, the informant came back from the bathroom, returned the coke spoon to Detective Minichello, and Mr. Weindling asked for the coke spoon back and let Detective Minichello keep the sample.

Here is another red herring that Mr. Anolik has tried to introduce in this trial. Mr. Anolik questioned

Detective Minichello. He said, "Isn't it incongruous that he Moses Weindling, would keep a little inexpensive coke spoon and yet give you a very expensive sample of cocaine?"

Mr. Anolik acted like that didn't make sense at all. I tell you, I submit to you, that, in fact, the only way it makes sense is if you see that sample of cocaine for what it was, and that is an inducement to buy a far larger quantity from the same person. Moses Weindling was telling Detective Minichello, "The large amount you are going to get from me is the same quality as what you have just tried here. Here, look at it. Check it out."

And the large amount he was negotiating to sell Detective Minichello was going to cost at least \$3400, and at the time they were thinking about four and a half ounces instead of three and a half, \$4,600 worth. So does it really make any sense except when you look at it in the framework of that larger sale to think Moses Weindling would hand over a couple of hundred dollars' worth of cocaine?

After the transfer of that sample, the negotiations began in earnest. Moses Weindling told Detective Minichello, "Look, I have four and a half ounces back home, but I have other customers too, and I can only give you three and a half tomorrow." He told him that if he could

give him the whole four and a half it would cost \$4,600.

Detective Minichello said, "Gee, that's a pretty stiff price, a little too high."

Moses Weindling said, "Look, I sell good stuff, good stuff."

At this point Weindling interrupted the negotiations and he said, "I am going to call 'my lady'".

He went and telephoned Patricia McIntyre and she came on her bike and Weindling brought her in.

Miss McIntyre greeted the informant when she arrived; she told Detective Minichello about her job with Eastern Airlines, that she was a stewardess, and even about a recent trip to Pittsburgh with Mr. Weindling.

After this, they got down to the nitty-gritty of the price negotiations for the three and a half ounces, and it was Patricia McIntyre, the woman sitting right there, who supplied the number they would play in combination with Detective Minichello for one month, the number 357. This was to be worth approximately \$200.

This is important. Miss McIntyre is contributing part of the price for the cocaine that Detective Minichello is to buy because the price was to be made up partly in cash, \$3,400 and partly in the action, placing that bet with Detective Minichello.

1 pggml4

2 So they continue their negotiations, set the
3 price, and agree to meet the next day at the Grass
4 Restaurant.

5 Less than an hour later, Moses Weindling called
6 Detective Minichello on the undercover phone at the Task
7 Force office. He told him that his customer had cancelled
8 and he could sell him the whole four and a half ounces
9 the next day for \$4500.

10 The next day arrives, the 28th of April.
11 Steve, the informant, and Detective Minichello arrive
12 at the Grass Restaurants. Agents Sandler, Panessa, and
13 Daly are already there seated, as it turned out, at the
14 next table.

15 Before an hour had passed those three agents
16 had left. They were replaced at the bar by Investigator
17 Hansen and Detective Campbell.

18 Moses Weindling and Patricia McIntyre arrive
19 shortly after Detective Minichello and the informant.
20 Weindling is in his new jumpsuit and knee-high boots, and
21 Miss McIntyre is in her white jumpsuit and her gold earrings.
22 Mr. Weindling was carrying this briefcase, and Miss
23 McIntyre was carrying this bag (indicating.)

24 When Detective Minichello asked for the
25 package, Weindling told him he could only sell him three

and a half ounces.

Step back and think about this for a minute. Put a couple of different pieces of evidence together. The difference in price between three and a half ounces and four and a half ounces is about \$1,000.

Mr. Weindling paid for lunch at Grass that afternoon. Mr. Weindling told Detective Minichello that he had to pay \$50 to have an accomplice in the restaurant that afternoon to bring the package there. When he was arrested, Mr. Weindling had \$900 approximately-\$892.50 on him.

I submit that when Mr. Weindling sat in Grass Restaurant that afternoon he had the proceeds in his pocket of the sale of one ounce of cocaine.

Mr. Weindling told Detective Minichello that neither he nor Miss McIntyre had the package on them right then; instead, he pulled a plastic bag from his boot, this plastic bag right here, Government Exhibit 2 in evidence, and he gave it to Detective Minichello. He kept insisting that Detective Minichello try that sample in order to divert his attention from the fact that they didn't have the three and a half ounces right there; they didn't have the package yet.

Moses Weindling said, "This sample comes right

1 from the package," and Miss McIntyre said, "It is good
2 stuff. I tried it last night; in fact, it was so good, it
3 hurt my nose. Look, you can see the mark."
4

5 The transfer of the second sample of cocaine
6 is also a crime. That's a crime charged in the third
7 count of the indictment. Both Patricia McIntyre and Moses
8 Weindling are charged with that crime.

9 Moses Weindling handed Detective Minichello
10 that sample, and Patricia McIntyre aided and assisted him
11 in that transfer.

12 Then there were more negotiations for the
13 sale. Weindling wanted \$3400 up front, that is, before
14 he had to hand over the cocaine. They arranged that when
15 the drugs arrived at the table, Detective Minichello would
16 get a chance to see them, and then the drugs would be held
17 there. Detective Minichello would have to go to the car,
18 get the money from the trunk, return to the table, pay
19 off Moses Weindling, and then he would get the drugs.

20 Weindling stressed how Miss McIntyre would be
21 inconvenienced if she had to produce the drugs right
22 there. He stressed how he had been inconvenienced by
23 having to do the deal in the restaurant instead of his
24 his apartment. You remember his words as Detective
25 Minichello quoted them? "A lion never leaves his den."

1 He said then at that point, "I had to pay
2 \$50 to have somebody in the restaurant to help me with
3 this deal." He said that that sample, Government Exhibit
4 2 alone, would cost him \$200."

5 When Detective Minichello countered by saying,
6 "You are really getting something you want: You are
7 getting hard cash from me," Weindling told him, "That's
8 okay. I also get clothes for my cocaine. I got this
9 blue jumpsuit by trading cocaine, and I get jewelry" --
10 pointing to Miss McIntyre's gold earrings.

11 Then, when they tried to find out Detective
12 Minichello's operation, he pointed to his briefcase and
13 told Detective Minichello he had strainers to help cut the
14 coke. That's dealers' language.

15 MR. ANOLIK: I object to that, your Honor.

16 THE COURT: Overruled.

17 MISS COTE: That's dealer's language for
18 diluting cocaine.

19 You have seen the strainers, ladies and gentle-
20 men. That's Government Exhibit 3A; they were taken from
21 that briefcase, and one of those strainers and one coke
22 spoon had cocaine traces on it.

23 Weindling also described in detail what
24 Detective Minichello was going to get. He said, "There
25

1 are three little separate bags. One has one ounce, one
2 has two ounces, and one has a half ounce, all with a
3 certain number of rocks, just like this sample."
4

5 Weindling bragged during the course of that
6 afternoon about what a cleaver dealer he was, how he had
7 dealt drugs in the army, and the Army kept him longer to
8 try to figure out how he did it. Perhaps it was the
9 same experience that Weindling was referring to when after
10 his arrest he got into that police car and told the
11 officer, "Officer Rinaldi, that he cooperated once before
12 while in the Army but it had not turned out well.

13 In any event, Moses Weindling and Patricia
14 McIntyre put Detective Minichello off, and instead of
15 giving him the package of three and a half ounces right
16 away had him wait for two hours while they finished lunch.
17 By this time, Detective Minichello had lost track of what
18 surveillance agents were in the restaurant. In fact, he
19 could no longer see any of them. We know that Detective
20 DeRosa and Agent Mahone, Detective Campbell, and Investigator
21 Hansen were all sitting around the bar hidden from
22 Detective Minichello's view by two large pillars. They,
23 however, were able to see at least one of them, Detective
24 Minichello, by looking through the reflections in the
25 mirror in one of those bars and by looking around one of

the other pillars.

Also, what those agents saw in addition to watching Detective Minichello was two women seated at a table very close to the bar, a table from which you could see Moses Weindling and Patricia McIntyre seated with Detective Minichello and the informant. They had arrived in mid-afternoon. At one point, about 4:30, the older of those two women, got up, left the table, and went downstairs. It was at that point that Moses Weindling looked at Patricia McIntyre and she got up and left the table and went downstairs.

Shortly thereafter, as Detective DeRosa told you, the older woman came up, and the younger woman, the brunette, went downstairs. The brunette joined Miss McIntyre in the bathroom, and the two of them talked intently for a short time, three, four, five minutes. They let it be known that they wanted to be in private, because when Miss Jeronimo came down, a waitress working at a busy restaurant, to use that bathroom, the way they looked at her made her wait outside.

After she could wait outside no longer, because her duty pressed, she went into that bathroom, and as she stood in that stall, she watched as the brunette said to Miss McIntyre, That's the best advice I can give you."

What advice was she giving her? They obviously knew each other from the way they were talking.

MR. JOY: I object to speculation, your Honor.

THE COURT: Overruled. It is argumentative.

MISS COTE: Was the burnette the courier who had the three and a half ounces that Miss McIntyre and Mr. Weindling were going to sell? Had the brunette seen the four surveillance agents at the bar, although hidden from Miss McIntyre and Mr. Weindling yet visible to her? Had she become suspicious that they were cops?

Anyway, at this point, the brunette left the bathroom, and we know from Detective DeRosa's testimony that she did not return upstairs.

Shortly thereafter, Miss Jeronimo followed Miss McIntyre out and heard her exclamation to herself as she mounted the stairs.

Was Miss McIntyre becoming nervous after listening to her friend's advice?

Detective DeRosa watched as Miss McIntyre returned to the table. She gave her purse to Moses Weindling and said, "Here, honey," before she sat down.

Weindling took that purse and unzipped it. He handed it over to Detective Minichello. Detective Minichello opened up the white envelope, that same white

1 envelope that Miss Jeronimo told you that the agents were
2 looking for when they came back to search the Grass
3 Restaurant later that afternoon. Inside that white
4 envelope there was a small round bag like you would get
5 in a drug store, and that was ripped, that brown bag, and
6 you saw three individual plastic bags within it. Through
7 those plastic bags, he felt the powdery rocks that Moses
8 had described to him.
9

10 When the defendant McIntyre and the defendant
11 Weindling held those drugs in their hands, intending to
12 sell them to Detective Minichello for \$3400, they were
13 committing a crime, and that's a crime charged in the
14 fourth count of this indictment.

15 How do we know that the three and a half
16 ounces charged in that fourth count are, in fact, cocaine?
17 His Honor will charge you that you don't have to be a
18 chemist. You could look at a variety of factors to make
19 a judgment as to whether or not it was, indeed, cocaine.
20 After all, you have the defendant's own word for it.
21 You have the price that was to be paid for it.

22 MR. ANOLIK: I object, again, your Honor.
23 I object to that last statement. I think it is very --
24 I objected at the beginning of the trial.

25 THE COURT: I think Miss Cote is referring to

the testimony of Detective Minichello, what he was told about the contents.

MR. ANOLIK: I am not sure.

THE COURT: I assume that's it?

MISS COTE: Yes, your Honor.

I will rephrase it to make it clearer.

THE COURT: Proceed.

MISS COTE: You heard Detective Minichello relating how Moses Weindling and Patricia McIntyre described that three and a half ounces, the three and a half ounces she tried the night before, the three and a half ounces that Moses described in such detail, so many rocks per bag, and so many bags.

You have the secrecy with which that three and a half ounces was handled, the need for an accomplice in the restaurant.

All of these factors you can piece together whether or not that substance was, indeed, cocaine.

When that cocaine arrived at the table, Moses Weindling all of a sudden changed all the plans. He suggested that Detective Minichello take the purchase with him. Detective Minichello was flustered. He feels foolish carrying a woman's purse and he doesn't see any of his team in the restaurant so he can't give the signal right

1 then and there to arrest the defendants. He leaves the
2 purse with Moses Weindling and he goes to his car and
3 he gives the signal there. The agents at the bar see
4 that signal through the window and they arrest Mr. Weindling
5 and the informant seated right there at the table; they
6 take Mr. Weindling's briefcase. They do this by telling
7 Moses Weindling in a loud voice that they are police and
8 that he is under arrest.
9

10 Then they go to arrest Miss McIntyre. Miss
11 McIntyre is not at the table because after Detective
12 Minichello left she got up from that table and she went
13 downstairs.

14 Investigator Hansen finds her at the telephone,
15 a few steps from the stairs and a few steps from the
16 ladies' room. He arrests her. Detective DeRosa estimated
17 she had been downstairs by herself without surveillance
18 nearly a minute. Investigator Hansen estimated nearly a
19 minute. She had obviously just begun to make a phone
20 call because when Investigator Hansen arrested her, he
21 told her to hang up the phone, her change came back, and
22 he told her, "Retrieve it; get it."

23 After taking Miss McIntyre upstairs, Investigator
24 Hansen hands her purse to Detective DeRosa. He looks in-
25 side, he inspects it; the three and a half ounces of

cocaine are no longer there.

Meanwhile, the officers have simulated an arrest of Detective Minichello and the informant. Detective Minichello has been moved outside, and in the confusion everyone assumes that someone else has the three and a half ounces of cocaine. It is only after everyone has returned to the Drug Enforcement Headquarters that they realize that no one has it.

What do they do then? They rush back to Grass Restaurant and they search for it.

Ladies and gentlemen, it would be nice if we had the three and a half ounces of cocaine, but we do not. It would be nice if everything worked as smoothly as it does on Mission Impossible, but it does not. But we do know what happened to that three and a half ounces. We do know that it was in Grass Restaurant on that afternoon. What we do not know is exactly where it went after Detective Minichello saw it.

Now, perhaps, Miss McIntyre gave it to the brunette who was still waiting downstairs when she went downstairs just before she was arrested.

Perhaps Miss McIntyre heard the commotion at the top of the stairs when Mr. Weindling was getting arrested, went to the ladies' room, flushed it down the

1 toilet, and then went to the phone.

2 Perhaps Miss McIntyre just threw it behind
3 the telephone or around the corner, or on the floor, and
4 a customer or a waiter picked it up before the officers
5 came back and searched for it.
6

7 Ladies and gentlemen, we don't know what
8 happened to it, but we do know this. Detective Minichello
9 got two samples of cocaine, those two samples. He got
10 one from Moses Weindling and one from both Moses Weindling
11 and Patricia McIntyre.

12 We do know, secondly, Miss McIntyre assured
13 Detective Minichello that she tried the package the night
14 before and that it was strong.

15 Thirdly, we know Detective Minichello saw those
16 three and a half ounces in Miss McIntyre's purse just
17 moments before she was arrested.

18 Lastly, we have the defendants' own word after
19 they were arrested. Officer Rinaldi told you what he
20 overheard as he sat in the driver's seat of that car. In
21 the car were Special Agent Panessa, Detective Daly, the
22 two defendants, and Officer Rinaldi. We have the defendant,
23 McIntyre calming down the defendant Weindling after the
24 arrest by telling him not to worry about it, there is
25 nothing in the pocketbook."

1
2 I really want to pause here and ask you to
3 think about that testimony carefully because that is very
4 damaging testimony, and it is particularly important
5 because when she took the witness stand Miss McIntyre, in
6 effect, admitted the substance of all that conversation.
7 YOU have Miss McIntyre acknowledging the three and a half
8 ounces that she carried right there in that conversation.

9 Look at the conversation from a couple of
10 different angles, and ask yourself if it makes any sense
11 at all except when you see it as an admission that she
12 carried that three and a half ounces and that she got
13 rid of it.

14 Think of it from the point of view of these
15 being innocent people who have just been placed under
16 arrest, in handcuffs, and they don't know what crime they
17 may have committed. Think of it from that point of view.

18 Instead of demanding to know why he was put
19 in handcuffs, the defendant Weindling is worrying, close
20 to tears, about a pocketbook, Miss McIntyre's pocketbook.
21 Consider this. Miss McIntyre is so calm, so composed,
22 right at that moment that she is calming down Mr. Weindling.
23 If she were innocent, wouldn't she be outraged or wouldn't
24 she be scared having just been arrested and put in a
25 police car? If she had not gotten rid of the three and a

1 half ounces successfully, wouldn't she be nervous, just
2 like Mr. Weindling was?
3

4 No. Her behavior only makes sense, what she
5 said to Mr. Weindling only makes sense, if she knows two
6 things: One, if she knows why she has been arrested; and,
7 two, she knows she has gotten rid of the evidence, and it
8 is not in her pocket.

9 At this point I would like to comment on some
10 of the evidence that has come in in this case to make it
11 clear that you understand what the Government feels is in
12 issue here, because Miss McIntyre's character, her previous
13 employment, who she knows, the fact she knows Mr.
14 Weindling, that's not at all relevant to whether or not
15 she committed the crimes with which she is charged in
16 this indictment. That's not what the Government's evidence
17 rests upon.

18 What the Government submits to you is that she
19 is guilty of the crimes charged in this indictment because
20 of what she did on April 27th and what she did on April
21 28th. You have evidence of her actions and in her words,
22 as quoted to you by Detective Minichello, and her words
23 as quoted to you by Officer Rinaldi. The Government only
24 asks that you consider that evidence that she be found to
25 have knowingly participated in these transfers of cocaine,

1
2 in that sale and negotiation for the sale of cocaine, that
3 she did it voluntarily. That is all that is at issue here.

4 At this point we have Moses Weindling admitting
5 to another officer, again Officer Rinaldi, possession of
6 that three and a half ounces.

7 At the same time he is trying to mislead the
8 agents as to what has happened to the three and a half
9 ounces.

10 Remember this: Officer Rinaldi is driving the
11 two defendants from one station house to another, trying
12 to find somebody to be able to personally search Miss
13 McIntyre. He learns through a radio conversation with
14 the Drug Enforcement Headquarters that they, in fact, do
15 not have the three and a half ounces. So he goes to
16 Moses Weindling and he says, "Look, you said you want to
17 cooperate. Well, where is it?"

18 Moses Weindling says, "I left it on the table."

19 The Government submits that when he said that,
20 Moses Weindling was saying two things: He was both admitting
21 that he knew what Officer Rinaldi was asking him about,
22 "Where is the three and a half ounces," and that he was
23 also trying to mislead Officer Rinaldi.

24 Then we have a whole string of admissions that
25 Moses Weindling made later that day to Agent Sandler.

1 Not only did he admit giving over the two samples and
2 having the three and a half ounces in Grass, but also
3 getting that cocaine from Jose, a Cuban on the West Side,
4 and still owing him \$2800.
5

6 So when it comes down to it, what I am asking
7 you is to not let Mr. Joy or Mr. Anolik throw up any
8 smoke screens when they talk to you and distract you from
9 what is the evidence in this case. The Government is not
10 asking you to find these defendants guilty because of any
11 evidence we don't have. We are asking you to find them
12 guilty because of evidence we do have.

13 All that evidence points to one thing. It
14 points to the fact that the two defendants sitting here
15 agreed with each other to try to sell Detective Minichello
16 cocaine, and this agreement was a conspiracy in violation
17 of the law, and that conspiracy and that crime is charged
18 in count one of this indictment.

19 What is the defense to all of this evidence?
20 Here is something that is a little bit difficult for me
21 to talk to you about. The defendants want you to believe
22 that Detective Minichello got on that stand and perjured
23 himself right in front of you. They want you to believe
24 that he jeopardized his career in the Police Department,
25 a career in which he has been decorated almost too many

1 times to remember in order to make a case against these
2 two people whom he didn't even know. I submit to you that
3 there can only be one reaction to such an argument and
4 that is outrage. Without one shred of evidence -- and I
5 ask you to look at the evidence in this case-- without one
6 shred of evidence, they want you to believe that a
7 detective working in a department where there has not been
8 a promotion in the last three years, who has been cited
9 by the Mayor for his valor, who risks his life --
10

11 MR. ANOLIK: I object to this whole thing,
12 your Honor. It has nothing to do with his credibility.

13 THE COURT: Overruled.

14 MISS COTE: He has risked his life on countless
15 occasions for the people of this City, a man whose family
16 and child live in this City, a family and child who are
17 proud of this man every day --

18 MR. ANOLI: I move for a mistrial. This has
19 nothing to do with this case.

20 THE COURT: Overruled.

21 Let us proceed,

22 MISS COTES: They want you to believe that
23 such a man is willing to throw all of that away by taking
24 that witness stand and lying to you.

25 If you believe that, if you believe Detective

Minichello was lying to you, then I say to you that the Government does not even want you to leave the jury box and go to deliberate: acquit these two people immediately, if you believe that.

But the Government submits, that after watching Detective Minichello on that stand you must reject any accusation that that man lied to you.

In addition, look at what you have to believe if you believe the story that Miss McIntyre has told you on that stand. Ask yourselves if any of this makes sense. She wants you to believe, number one, that all of a sudden on April 27th she is walking along with her bicycle and Moses Weindling happens at that precise moment to leave the back of Sixish Restaurant, wanders around on the street, runs into her, and brings her in. I submit to you, that what Detective Minichello happened, that's what happened, and that's the only thing that makes sense.

Moses Weindling wanted to call his lady; he went and called his lady. His lady came after she was called.

Why did he call her? He called her because he wanted her there to be with him as he negotiated the sale of three and a half ounces.

Secondly, Miss McIntyre wants you to believe

1
2 that she gave out of the blue three separate digits to
3 Mr. Weindling, the digit three, the digit five, and the
4 digit seven; that she didn't hear anything about gambling
5 or drugs or cocaine that whole afternoon. Well, it is in
6 that same conversation, that she admitted to you, that she
7 is telling Detective Minichello about Eastern Airlines and
8 about flying to Pittsburgh, the same person who was
9 participating so much she knows how many jinx everybody is
10 having, what that is, and the same person who admitted to
11 you on cross examination that she does in fact know what
12 a 357 magnum is -- the rather morbid joke that Moses
13 Weindling made that afternoon.

14 Third, does this make any sense? The defendants
15 ask you to believe that four individuals, one of them
16 Detective Minichello who didn't know either of the defendants
17 before that day, met for two days in a row, a couple of
18 hours, with very little explanation at all of why that was
19 taking place.

20 I submit to you that those two meetings make
21 sense when you view them from what Detective Minichello
22 told you. Those four people were there on those two days
23 to buy and sell cocaine.

24 Fourth, does this make sense? Does it make any
25 sense that Detective Minichello, if he were going to

1
2 fabricate a whole story about the sale of cocaine, would
3 make up a story that first Moses Weindling was going to
4 sell him three and a half ounces of cocaine, and then he
5 called and was going to sell him four and a half ounces
6 of cocaine, and then the next day he changed it back to
7 three and a half? Why all these changes?

8 But there is evidence, ladies and gentlemen,
9 in the record, to explain why those figures changed, and
10 Detective Minichello explained it to you. Doesn't the
11 fact that Moses Weindling had \$900 in his pocket at the
12 time he was arrested in fact corroborate that he had, in-
13 deed, sold one ounce of cocaine the night before to a
14 second customer, just as he told Detective Minichello?

15 Fifth, ask if this makes sense? Patricia
16 McIntyre would have you believe that on April 28th she
17 carried Moses Weindling's money in her purse. Now she
18 would have you believe that Moses Weindling didn't want
19 his pocket to bulge in his jumpsuit. Well, he had an
20 attache case. He could have kept his money there if he
21 wanted to.

22 Why is it so important that she say to you
23 that he kept his money in her purse? Well, because
24 Detective DeRosa saw her hand that purse to Moses Weindling.
25 When she came back from downstairs, back from meeting

1
2 with the brunette; so her story doesn't make sense and
3 doesn't even go far enough, because Detective DeRosa also
4 told you that he saw Detective Minichello peering into
5 and examining, handling, an object in his lap, and her
6 explanation doesn't even cover why her purse moved from
7 Weindling to Detective Minichello.

8 To believe that Detective Minichello is a liar,
9 you also have to believe that he is a psyche. You have
10 to believe that he set up these two defendants, told his
11 whole group that he was going to be buying three and a
12 half ounces of cocaine that day, had his whole group on
13 surveillance that day, ready for the arrest, and that when
14 he left the table and went to the car to give the signal
15 for the arrest, that he knew that that woman would get up
16 immediately and go downstairs, that she would not be
17 arrested at the table, because if she had been arrested
18 at the table along with Moses Weindling -- and Detective
19 Minichello left them both sitting there together, -- that
20 everyone would have known he was lying. What would have
21 been his explanation for where the three and a half ounces
22 were?

23 Finally, ask yourselves if this makes sense?
24 What about all the statements that the defendants made
25 after their arrest? What is the first thing that Moses

1 Weindling says to Officer Rinaldi when he is put in the
2 car? It is not, "What are you arresting me for?" It is,
3 "I would like to cooperate. I did it in the Army. I had
4 a bad experience, but I want to cooperate now."
5

6 What was the defendant Weindling doing when
7 he said, "The pocketbook, the pocketbook," except worrying
8 about those three and a half ounces.

9 What was the defendant McIntyre doing when she
10 said, "There is nothing in the pocketbook; don't worry
11 about it," except telling him, "I got rid of the three and
12 a half ounces."

13 Why did the defendant Weindling say he left
14 the three and a half ounces on the table unless he knew
15 that the three and a half ounces were in the restaurant
16 that afternoon?

17 Why did he admit to Agent Sandler that he had
18 the three and a half ounces, and transferred the two
19 samples and owed Jose \$2800?

20 Indeed, why did he say any of that unless it
21 was true?

22 I'm done now for this first time I have to
23 address you. I will have a chance to address you again
24 at the conclusion of the two defense summations. I have
25 tried to review all the facts for you. I have tried to

pggm35

1 review all of the facts for you. I have tried to argue
2 from the record to bring it all together. You know, you
3 can't go outside the record. You have to argue from the
4 evidence that is before you. I have tried to bring that
5 before you, and I ask you to try to make the two defense
6 attorneys do it, to argue from the record, to address
7 themselves to the evidence that is in this case, the evidence
8 that is before you.

10 This case is an important one. The defendants
11 are entitled to a fair trial under the constitution, under
12 the laws of this country. It is something that everyone
13 in this courtroom has tried to give them. Everyone has
14 tried to preserve that for them. I think it is fair
15 to say that they have gotten a fair trial here.

16 The Government and the public are also entitled
17 to a fair trial. Just as the worse thing that could happen
18 would be for an innocent person to be found guilty -- and
19 that should never happen -- a guilty person should not be
20 acquitted.

21 The Government submits that it has proved on
22 the record and in the evidence that these defendants are
23 guilty of the crimes charged in this indictment. The
24 government submits to you that these two defendants
25 planned to share in the proceeds of their criminal enter-

prize, their sale of cocaine. Let them share in the guilt.

THE COURT: Ladies and gentlemen, we will be in recess until 10:00 o'clock in the morning. Notwithstanding that we are close to the end of the case -- we have two summations to go, and the Court's charge -- continue to keep an open mind and do not discuss the case with anyone.

I will see you at 10:00 o'clock in the morning.

(Jury excused.)

THE COURT: Do counsel need me for anything?

MR. JOY: No, your Honor.

MR. ANOLIK: No, your Honor.

THE COURT: I will see you tomorrow.

(A recess was taken at 4:20 p.m.)

(Adjourned to November 1, 1977, at 10:00 A.M.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

77 Cr. 472

MOSES WEINDLING and
PATRICIA JOANNE McINTYRE,

Defendants.

November 1, 1977

Before:

HON. RICHARD OWEN,

District Judge

A P P E A R A N C E S

ROBERT B. FISKE, JR.,
United States Attorney for the
Southern District of New York

BY: DENISE L. COTE and
DANIEL J. BELLER,
Assistant United States Attorneys

IRVING ANOLIK, ESQ.,
Attorney for Defendant Weindling

LOENARD JOY, ESQ.,
Attorney for Defendant McIntyre

1
2 MISS COTE: If it please the Court, your Honor,
3 Judge Owen, and ladies and gentlemen:

4 What I have feared would happen in the summa-
5 tions has, indeed happened. I submit to you that they have
6 tried to divert your attention from what is the evidence
7 in this case, from the testimony you heard from the
8 witnesses and from the physical evidence you have before
9 you. They want you to look everywhere except at that table
10 and at those two people.

11 What I will do in rebuttal summation is try
12 to address some of the arguments they made to you, and I
13 will do that by focusing again on the evidence, because
14 it is only on the evidence that you are going to be able
15 to base your verdict.

16 The first thing I want to do is clear away
17 some of the debris left by Miss McIntyre's past employment.

18 What is Miss McIntyre's employment history
19 doing in this case? It is not here because I am over-
20 reaching. The reason that issue was even raised in this
21 case is quite simple. It is because of what Miss McIntyre
22 herself told you from that witness stand. You see the kind
23 of argument that Mr. Joy is making and Mr. Anolik also
24 made. They criticized the Government for putting evidence
25 in this case which was only put in because of questions

1 pggm3

2 they posed to witnesses, because of issues they raised.
3 Let me give you one example.

4 Remember Detective Minichello? You heard his
5 direct examination when I initially put questions to him.
6 There was nothing about citations, nothing about details
7 of his work on the Police Force for fourteen years. And
8 Mr. Anolik got up and cross examined Detective Minichello
9 and basically called him a liar. Only after that happened
10 did I get up and pose questions to Detective Minichello
11 that culled forth from him an explanation of exactly who
12 he is, to let him give his life to you because you have
13 to look at that man, you have to know his background, and
14 you have to know whether he is lying to you or not. It
15 is that simple.

16 The same is true about Miss McIntyre and her
17 employment history. You are not strangers here. You
18 saw everything that happened in this courtroom. I don't
19 have to go through it in detail again.

20 You remember what Mr. Joy brought out on his
21 direct examination of Miss McIntyre? You heard she was
22 from McKeesport, Pennsylvania; she finished high school
23 in Florida; the next thing you know is that she is a
24 stewardess working for Eastern Airlines in New York in
25 the Fall of 1976. If that is supposed to be a narration

of her life, a description of who she is --

MR. JOY: I object to that, your Honor.

THE COURT: Overruled.

MISS COTE: It is not accurate. I ask you to apply the test that Mr. Joy gave when he addressed himself to that issue. I ask you if she was candid with you.

You have a right to know what this woman has done for a living, who she is. Her background was important to her when she testified to you on direct examination. She brought out some of that background.

The Government submits, yes, her background is important, but it is important for you to get a picture of her complete background and not a partial picture. I say this very sincerely. It is not a lawyer's job to embarrass witnesses. I hope you don't think that I tried to do that at all during the course of this trial. It is a lawyer's job to try and bring out facts to let you see the evidence, so that you can evaluate a witness because what you are being asked to do is to decide, and Mr. Joy, I believe in his summation, put that question to you also. You are being asked to decide whether Miss McIntyre was being truthful when she told you that she didn't know what was going on those two days at the Sixish Restaurant and at the Grass Restaurant. That's one of the issues that

you have to apply your common sense to.

If Miss McIntyre's background is not relevant to this case in any way at all, the only way it is relevant is because it can be used by you to decide whether or not she knew what was going on on April 27th and April 28th, whether or not she committed crimes.

I submit from her testimony from that stand you know that at 22 years of age, this is a woman who has seen a bit of the world, a woman who is not nieve.

The question is; Did she or did she not know that was going on? Did she or did she not commit crimes?

There has been another smoke screen thrown up before you, and I hope you saw it for what it was, and that is the issue of whether Miss Thomas is black or white. Whether Miss Thomas is black or white has no relevance in this case at all.

So why was that raised? Indeed, why is Patricia Thomas in this case? You heard Detective DeRosa tell you in the course of preparing for this trial witnesses advised the Government that there was another woman who was in the restaurant, at Grass Restaurant. That was about the extent of the Government's knowledge a week and a half ago.

Then more witnesses were interviewed, and

1 eventually we found Miss Jeronimo who testified that that
2 other woman was a brunette, and she was talking to Miss
3 McIntyre in Grass Restaurant in the bathroom.
4

5 Was this just any other brunette? Is this
6 just a coincidence that the brunette in Grass Restaurant
7 was a former room-mate of Miss McIntyre, someone who knows
8 both the defendants, who was a stewardess for Eastern
9 Airlines?

10 MR. JOY: I object, your Honor. There is no
11 testimony that she was in the restaurant at all.

12 THE COURT: I think the record will support
13 that argument.

14 MISS COTE: I believe, if you remember,
15 Detective DeRosa was asked how sure was he that the brunette
16 he saw in Grass Restaurant on the 28th was Patricia Thomas,
17 and if you remember he said he was 95 percent sure.

18 So what is Patricia Thomas doing in this case?
19 The Government didn't bring her to Grass Restaurant on the
20 28th; the defendants did that.

21 MR. ANOLIK: Objection. There is no evidence
22 to support that at all.

23 THE COURT: Overruled.

24 MISS COTE: What happens to Patricia Thomas?
25 That's a matter for another day. But on the facts of this

case --

MR. ANOLIK: I object to that. That's completely improper.

MR. JOY: I join in that, your Honor.

THE COURT: Proceed.

MISS COTE: On the facts of this case and from the evidence given to you, and from your good common sense, you can figure out what happened at Grass Restaurant on the 28th and where Patricia Thomas fits in.

Now two defense attorneys have argued -- and correct me if I am wrong, but perhaps Mr. Joy argued this point, I'm not sure -- that Miss McIntyre did not have enough time when she went downstairs to get rid of the three and a half ounces of cocaine that were in her purse. Well, it is she, Miss McIntyre, and no one else, who said that after she got up from that table she left it and returned to borrow a dime from Moses Weindling. You didn't hear anyone else testify to that fact.

Secondly, two different witnesses -- asked for their testimony to be read back to you if you need to have your memories refreshed on this fact -- two different witnesses, both Investigator Hansen and Detective DeRosa, testified that Miss McIntyre was downstairs by herself for approximately a minute, out of their view for

1 about a minute. That's a few steps from the ladies' room,
2 that telephone. It is not a great distance. Ask for the
3 record to be read back if you are confused about distance.
4

5 Remember this: Miss Thomas was down there too
6 because Detective DeRosa told you he saw Miss Thomas go
7 down, and he kept his eyes on that stairway and he didn't
8 see her come up.

9 How long does it take, I ask you, to take a
10 package out of your purse and hand it to somebody? Two
11 seconds? Three seconds? Half a second?

12 No, it was no accident that Miss Thomas was
13 in that restaurant. She was not asked by a friend to
14 drop by while she was driving her bike along. She was
15 there to help. We didn't bring her to that restaurant;
16 the defendants did.

17 What is a response to all of this? They
18 explain, because we only learned about it a week before
19 trial -- well, isn't it better that we finally solved
20 that portion of this crime even if it is on the eve of
21 trial? It is because we did solve that portion --

22 MR. ANOLIK: I object to that. She is putting
23 her own credibility in issue, and that's improper. She
24 was not there.

25 THE COURT: Argue it perhaps differently, Miss

Cote.

MISS COTE: It is because we did solve that portion of the crime that the defendants have brought--

THE COURT: I take it the Government urges that it has solved that portion of the crime within the last week, right?

Proceed.

MISS COTE: They have brought the whole issue of whether Miss Thomas is black or white into this trial. They brought it up. We didn't bring it up. They brought it up when they cross examined Detective DeRosa.

As you will remember, Detective DeRosa described Miss Thomas as a woman, a white woman with a tan, and a brunette, and further details on that description. But the relevant part was: A white woman with a tan.

On cross examination he was asked whether Miss Thomas was black or white, and he said, "Well, she appeared white to me; she is a white woman with a tan." He gives you his response, and then Miss McIntyre takes the stand not knowing we have a picture of Miss Thomas and says, "Oh, Miss Thomas, she is a black girl."

What was the point of that testimony? Does that testimony help you to understand whether Detective DeRosa was mistaken or not about his identification? Does

1
2 it help you to know that she is black? Isn't the evidence
3 really that this picture fairly, accurately, describes who
4 Patricia Thomas was? It is a model's picture. It is some-
5 thing somebody would have in their portfolio. It is not
6 a picture that the Government took.

7 MR. ANOLIK: That's testimony now. Is she
8 under oath?

9 THE COURT: Proceed.

10 MISS COTE: Look at that picture. Apply your
11 common sense to that picture. They complain because
12 we introduced a picture to clear up a false issue that they
13 put into this case, an issue they raised. If they want
14 to explain, let them explain to dooms day, but it is not
15 helpful to you, the Government submits.

16 What about the Government not calling Miss
17 Thomas? What about the Government not calling the in-
18 formant?

19 First of all, do you think that if the in-
20 formant's version of what happened at Grass and Sixish was
21 different than Detective Minichello's, that one of those
22 two defendants wouldn't have called him and put him on the
23 stand?

24 I submit to you that if he had taken that
25 stand, if the Government had called him, and he testified

1 pggml1

2 and his testimony had a corroborated Detective Minichello,
3 their argument wouldn't be any different, except the fact
4 that it is another lying Government witness. That's all
5 it would be.

6 His Honor will charge you, as both defendants
7 pointed out, that both the informant and Miss Thomas are
8 equally available to both sides, the Government and the
9 defendants.

10 What about Miss Thomas? Do you think she
11 would have said she was not at Grass if she could have
12 proved she was not at Grass on the 28th? That one of the
13 defendants would not have called her?

14 Mr. Anolik argues it is crazy for us to produce
15 her. After all, she might have been there. Well, yes,
16 that's the point. The Government submits it was Miss
17 Thomas who was the brunette there to help the defendants
18 in the restaurant.

19 We have the burden of proof, and in my opening
20 address to you I said it is a burden we accept. To meet
21 that burden of proof we put witnesses on that stand. We
22 put Detective Minichello on the stand and we put surveillance
23 witnesses on the stand. We put a waitress on that stand.
24 We gave you samples of cocaine, besides all kinds of other
25 physical evidence, documents that you could look at.

1
2 His Honor will charge you that we could have
3 called those witnesses; his Honor will charge you that they
4 could have called those witnesses.

5 Don't you think that if Miss Thomas looked any
6 different than this picture that they would have called
7 her?

8 Mr. Anolik spent a great deal of time talking
9 to you about Moses Weindling's drug habit. Well, there
10 is no evidence in the record to support what he has tried
11 to convince you of. As I told you before, his use gave
12 both a motive and opportunity. He had to pay for those
13 high priced drugs, and this was something: receiving
14 financial aid from a college. He had to get it from some-
15 where. He had sources already.

16 The Government submits that the money he got
17 from selling his cocaine not only bought cocaine for his
18 own use, but supported an expensive lifestyle.

19 You have seen his fashionable denim blue
20 jeans, and you have heard about his knee length boots. You
21 heard about the jewelry he bought for his girlfriend and
22 co-conspirator. You heard about his trips around the
23 United States and to the Carribean, and you have heard about
24 lunch at fashionable East Side watering holes for singles:
25 Grass Restaurant.

1
2 Don't forget the \$900 found in his pocket when
3 he was arrested. Don't let Mr. Anolik mislead you about
4 that \$900. It was in his pocket when he was arrested.
5 It was in Mr. Weindling's pocket when he was arrested.
6 So when Mr. Weindling asked about the pocketbook, he was
7 not asking about his \$900. The evidence is that the
8 \$900 was taken off him at the arrest and not out of the
9 pocketbook.

10 By the way, is there any evidence in this case
11 that any complaint was made by anyone about the agents
12 stealing \$900? This is a tremendous red herring; this is
13 another way to smear the character --

14 MR. ANOLIK: I don't think the Government
15 can argue on lack of evidence.

16 THE COURT: Overruled.

17 MR. ANOLIK: I ask for a mistrial.

18 THE COURT: Overruled. Motion denied.

19 MISS COTE: That is another way to smear the
20 character of the agents in this case without any evidence
21 at all.

22 Yes, Mr. Weindling had a habit, but it was
23 not a drug habit. It was a habit of spending money on
24 himself, and that money was not legitimate. It was drug
25 money. It was drug money he got from selling cocaine.

1
2 There is a question of why didn't Detective
3 Minichello arrest the defendants right there at the table
4 when he saw the three and a half ounces of cocaine in
5 Miss McIntyre's pocketbook? I explained this before,
6 and I will explain it again: The evidence is in the
7 record. What was Detective Minichello doing? He was
8 working undercover. You heard the testimony. The agents
9 simulated his arrest, and the informant's arrest right at
10 the same time that they arrested the two defendants.

11 Furthermore, he could not even give the signal
12 from the table because he didn't see any surveillance
13 agents to see the signal.

14 Ladies and gentlemen, they hope you find it
15 hard to believe that two different agents thought that
16 a blond haired woman had blue eyes, and at the same time.
17 Because there is this coincidence they say that they must
18 be lying, that they are telling the same story. In the
19 next breath they say: But they are telling different
20 stories and see, again, they are lying.

21 Hansen said he was not at any meeting and
22 other agents say he was.

23 Detective Minichello, he agreed with Miss
24 McIntyre, he agreed as to the position of the people at
25 the table just as she had.

1 MR. ANOLIK: That's not on the record.

2 MR. JOY: She corrected it.

3 THE COURT: The jury's recollection will
4 govern.

5 MISS COTE: You may ask for the transcript
6 to be read back to you. I am using Mr. Bellow's notes,
7 but --

8 MR. JOY: I object to that.

9 MR. ANOLIK: Is he supposed to be the court
10 reporter?

11 THE COURT: She has told the jury and I will
12 tell the jury that it is their recollection that governs.
13 If they have any question about their recollection --

14 Counsel, I don't really think this is a matter
15 for humor at the back table. I don't understand why you
16 and Mr. Joy are smiling.

17 MR. ANOLIK: Because she said, "Mr. Bellow's
18 notes."

19 THE COURT: Is that funny?

20 MR. ANOLIK: I thought it was very funny.

21 THE COURT: Let's go forward.

22 MISS COTE: I submit when you call for the
23 record to be read back, you will find that Detective
24 Minichello said that he was on the right-hand side of
25

1
2 Moses Weindling, just as Miss McIntyre testified. So here
3 he contradicts the surveillance agents, and because of
4 those things, they want you to believe that the witnesses
5 are lying. They can't have it both ways.

6 Detective DeRosa -- and, again, call for the
7 notes to be read if you have any doubt about it -- never
8 said he saw the pocketbook as it was, below the table line.
9 He never tried to make you believe that he could see
10 through tableclothes.

11 What the Government submits to you is that
12 what really happened in this case is that the agents were
13 exceptionately accurate when it came to relating what they
14 saw. In fact, this was borne out very dramatically in
15 this very courtroom. You saw Detective DeRosa recognize
16 a purse. He had not even seen that for six months. This
17 was a purse that was hanging from that coat rack. This was
18 a purse he testified looked very similar to the one he
19 searched and that Miss McIntyre had carried that day at
20 Grass. Detective DeRosa passed that test, didn't he?

21 Mr. Anolik says that Detective Minichello was
22 lying. But he says also in the same breath something else
23 that is very interesting. This is for the first time in
24 this case: That Moses Weindling, in fact, did give those
25 two samples of cocaine to Detective Minichello but gave

1 pggml7

2 them as part of a gambling transaction.

3 Why did he admit to those two transfers? The
4 Government submits it is because the evidence is over-
5 whelming in this case.

6 As his Honor will tell you, even if you
7 accept his explanation for what happened -- and it is
8 preposterous --

9 MR. ANOLIK: I object to that, your Honor.
10 That's not my argument. My argument was that it could have
11 been. That was a hypothetical.

12 THE COURT: Proceed.

13 MISS COTE: And such a transfer would con-
14 stitute a distribution within the meaning of the law.
15 That is, if what Mr. --

16 MR. ANOLIK: I object to any instruction on
17 the law.

18 THE COURT: She is commenting on an argument
19 you made to the jury.

20 MR. ANOLIK: A hypothetical argument.

21 THE COURT: You may characterize it as such.
22 Proceed.

23 MISS COTE: Even if what Mr. Anolik said is
24 true, then Moses Weindling is guilty of violating the law
25 as charged in counts two and three of this indictment.

pggm18

Why would Detective Minichello do what he did if it is true that those two transactions were part of a whole gambling thing? Why make up the three and a half ounce transaction? Under their reasoning he would have his case at that point; he would have his promotion all tied up. Why would he testify about three and a half ounces that he didn't have? Because the Government submits to you he was telling the truth. That is what happened.

They continue the attacks on Detective Minichello because of the overwhelming evidence in this case they resort to outrageous arguments on his character. Finally, they dig down to the bottom of the barrel and ask you to believe that that man took the stand, raised his hand, and lied to you without any evidence of motive.

Do you remember Mr. Anolik's pathetic attempt to try to get out evidence of a motive when he was cross examining Detective Minichello? Did you see his jaw drop when he asked him whether or not he had gotten any promotions and Detective Minichello told him that there had not been any regular promotions for three years?

So you see what the argument is in this case. They are trying to put the agents, the detectives, and the officers on trial.

They complained about them drinking while

1 sitting in bars working on their cases, working to catch
2 cocaine dealers. They have ridiculed their investigation
3 because they didn't seize the three and a half ounces.
4 They tried to suggest there is something wrong with in-
5 vestigating cases and gathering evidence against a cocaine
6 dealer, a cocaine dealer who gave them a sample in the very
7 first meeting.
8

9 They have done all of this to try to shift
10 your attention from those two people who are on trial, and
11 those are the only people who are here on trial, not the
12 agents.

13 With all of these complaints they made about
14 the agents, really reveals confusion.

15 Do you remember Mr. Anolik asking Agent Sandler
16 whether or not Agent Sandler had searched the other agents
17 to see if they had contraband on them?

18 MR. ANOLIK: That was Mr. Joy.

19 MISS COTE: My memory may be incorrect. Your
20 memory controls, but that really is an amazing question.

21 Does it make any sense at all to put these
22 agents on the stand in the light of what you have heard?
23 Particularly, I would like you to compare the testimony
24 they gave to you and the testimony Miss McIntyre gave to
25 you. Each of those witnesses, all of those witnesses,

pggm20

1
2 were subject to cross examination, and it is cross examina-
3 tion which in our system is supposed to bring out for you,
4 the jury, whether or not the witnesses are telling the
5 truth. Compare what you heard from those witnesses on
6 cross examination and what you heard from Miss McIntyre.

7 Something very interesting happened when Mr.
8 Joy began to discuss Miss McIntyre in his summation to you.
9 He said that there was no evidence that she knew of what
10 was happening, even if Moses Weindling was, indeed, selling
11 the cocaine. That's an interesting admission right on his
12 summation, isn't it? He had to admit that after he heard
13 the overwhelming evidence from the Government's witnesses
14 the crime that she is charged with comes down to this
15 question: Whether or not she knew what was happening and
16 whether or not she participated.

17 You have heard the evidence. I will not re-
18 view it in detail. She told Detective Minichello in trying
19 to sell him, trying to encourage him to do the deal, that
20 she used cocaine the night before, and it was dynamite.

21 Miss McIntyre said in the car, "I have gotten
22 rid of it and there is no more."

23 You saw her demeanor on the stand. Was she
24 truthful when she testified before you? Mr. Joy says she
25 was candid. Is that true? Was she candid about the

number 357 which, at first, she says were three random numbers, and under cross examination she said, "Yes, they do mean something to me. Yes, I do know what a 357 magnum is." I believe she said, "I have a brother who is a cop.

Was she candid when she said to you, "I paid Mr. Weindling's fare for those trips"?

Then, finally, she admitted that it was the airlines who paid for one of those trips.

Was she candid when she said that? Was it one trip when a certificate that you have, which is in evidence, says that she left Mr Weindling use someone else's name, a member of her family, supposedly, with passes -- plural, not singular?

They want you to believe that the airlines assumed that this person was her husband-- just assumed. At the same time she is telling you that the airlines are extremely worried about this problem of everyone using family passes whenever they are not family members.

Then she tells you as part of putting in Mr. Weindling's defense for him that yes, he was a photographer, he had a studio, and he had a partner. Under cross examination she says, "No, he didn't have any studio, and, no, it all fell through. It didn't really exist.

1
2 Generally consider her demeanor. Did she stand
3 the test of cross examination as Mr. Joy contends?

4 What about the lack of evidence in this case?
5 They have asked for the tapes; they have asked for photo-
6 graphs; they have asked for fingerprints; they have asked
7 for an informant. One of the questions that they asked
8 of a witness, they asked for parabolic microphones. It
9 is no more than another smoke screen, I submit to you.
10 This is something to distract you from what you have to
11 do.

12 The Government is not asking you to find
13 these people guilty on anything other than what we have
14 introduced in evidence in this case.

15 If we had introduced just the testimony of
16 the informant, they would have asked, "Why wasn't an under-
17 cover used?"

18 If we only had the testimony of an undercover
19 agent, they would want to know, "Where is your testimony?"

20 If we only had testimony from surveillance
21 officers, they would want to know, "Where is the photo-
22 graphic surveillance?"

23 This is really a good point. Pictures. Pictures
24 in the middle of the afternoon! Detective DeRosa is there
25 on surveillance, but they want him to interrupt this

pggm23

conversation with Mr. Weindling who is negotiating the sale of cocaine with Miss McIntyre, interrupt that, walk up to the table, and say, "Pose. This is picture time. I am here to take your picture." It doesn't make sense.

If we had done that, they would ask, "Where are the motion pictures, and why aren't they in living color?"

The defendants want you to forget what we do have, because what we have is overwhelming. We have the testimony of Detective Minichello; we have the testimony of the surveillance officers; we have the defendants' admissions after they were arrested; we have the physical evidence receipt here on this table, and you could ask to see it.

They want you to focus on the three and a half ounces that we don't have, and to forget the two samples.

They want you to focus on Detective Minichello hoping that you will believe that he is a liar and forget about the surveillance. Forget about the post-arrest admissions. Each of them argues that I have been over zealous.

MR. ANOLIK: Objection. I never said that.

THE COURT: Proceed.

MISS COTE: They indicated from the record by

1 pointing to all the evidence in the case, right, how that
2 was so.
3

4 The Government submits they didn't prove that
5 to you. They didn't refer to the record. In fact, the
6 Government submits you do know how this case was prepared
7 because you heard Miss Jeronimo tell you. She was not told
8 who was on trial. She was not told their names. She was
9 not told what crimes they were accused of. She was not
10 told where her testimony fit in. She was told to come here
11 and tell you her story, to simply tell the truth, and that
12 goes for all the witnesses the Government has put on the
13 stand.

14 I have come to the end, and I wanted to just
15 address one more argument to you, and that is, "What have
16 the defendants really said about the critical evidence in
17 this case against both of them? Have they made any per-
18 suasive argument to you about those comments, both of
19 them made in the car after they were arrested? Really, can
20 there be any other meaning than that Moses Weindling was
21 worried about the three and a half ounces, and Miss
22 McIntyre knew she had gotten rid of that?

23 Do you remember that scene? Officer Rinaldi
24 is in the car. Moses Weindling is put in. Officer Rinaldi
25 tells him, "Don't talk to me now even if you want to

1
2 cooperate. Don't talk to me now. Wait until you get down
3 to the office.

4 Then Miss McIntyre is put in. Both of them
5 are given their rights. Officer Rinaldi had already told
6 Moses Weindling why he was arrested, that it was for
7 narcotic charges.

8 After they had been given their rights, Moses
9 Weindling said, "the pocketbook, the pocketbook, where is
10 the pocketbook?" He is not talking about \$900. He has
11 that in his pocket.

12 What is Miss McIntyre do? She whispers right
13 back in his ear, "Don't worry. Don't worry. There is
14 nothing in the pocketbook."

15 Is there any other interpretation other than
16 the fact that Moses Weindling was talking about three and
17 a half ounces in Miss McIntyre's purse?

18 There is simply no doubt about it at all, I
19 submit.

20 In conclusion, Mr. Anolik has mentioned to
21 you that this case is a milestone in the lives of these
22 two people. I'm not denying that. I'm not denying the
23 seriousness of the charges against them.

24 But don't be misled by those comments of his
25

because whether these two people, if you should find them guilty, get probation or a suspended sentence --

MR. ANOLIK: Your Honor, I object to that. They face fifteen years here.

THE COURT: I will charge the jury that sentence is a matter not of their province; it is a matter of the Court's province should there be any finding.

Go ahead without further reference to that subject.

MISS COTE: Ladies and gentlemen, I am finished.

The Government submits that both of these defendants engaged in a conspiracy to distribute cocaine and that they, in fact, did distribute cocaine.

The Government submits that when you have examined that evidence, all the evidence in this case, and when you have applied your common sense to that evidence, you will return a verdict finding each of these defendants guilty of all the crimes charged in this indictment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pob

823

United States of America

vs.

77 Cr. 472

Moses Weindling and
Patricia McIntyre

New York, New York.
November 2, 1977- 10:00 A.M.

(Jury continued to deliberate, starting
at 10:00 A.M.)

(Note received at 10:02 A.M.: "Request the
testimony of Agent Sandler (his second time on the stand)
regarding the \$900 and the receipt Patricia McIntyre
may or may not have signed."

(10:45 A.M.)

THE COURT: We have a note. We will bring
in the jury.

(Jury present.)

THE COURT: Good morning, ladies and gentlemen.
We have your note which has been marked as
Court Exhibit 4, and we are prepared to read to you the
testimony you have asked for.

(Court Exhibit 4 marked.)

(Testimony read.)

2 (Jury continued their deliberations at
3 10:50 A.M.)

xxx 4 (Court Exhibit 5 marked.)

5 (At 11:00 A.M. Court Exhibit 5 was received:
6 "We have reached a unanimous verdict on the indictment.)

7 THE COURT: You have heard about this note?

8 MS. COTE: Yes, your Honor.

9 (Jury present.)

10 THE COURT: Ladies and gentlemen, I have
11 your note that you have reached a verdict.

12 THE CLERK: Members of the jury, please answer
13 present as your names are called.

14 (Roll call.)

15 THE CLERK: Mr. Foreman, please stand.

16 BY THE CLERK:

17 Q Has the jury reached a verdict?

18 A We have.

19 Q What is that verdict as to the defendant
20 Weindling on Count 1?

21 A Guilty.

22 Q On Count 2?

23 A Guilty.

24 Q On Count 3?

25 A Guilty.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q On Count 4?

A Guilty.

Q What is your verdict as to defendant McIntyre
on Count 1?

A Guilty.

Q On Count 3?

A Guilty.

Q On Count 4?

A Guilty.

THE COURT: Poll the jury.

(Jury duly polled.)

(All answered in the affirmative.)

THE COURT: Ladies and gentlemen, before I
discharge you with instructions to return to the jury room,
may I thank you for your services in this court before me
as ministers of justice for the past several days. May I
express my view that you have, by your careful attention
to the testimony and your careful deliberations here and
your concern in those deliberations, truly
acted as ministers of justice in this case, which is after
all what your duty was here, and I want to thank you for
that service. You are excused with those thanks.

Any applications?

(Jury leaves the courtroom.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS INDEX

842

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Anthony Michael Minichiello	34	72	129	140
Jon Bruce Hansen	151	159	197	198
John DeRosa	207	220	242	279
Charles J. Rinaldi	284	296		
Fred Sandler (recalled)	319 600	343 602	376	
John P. Sawinski	381	392	403	
Sandra Ann Jeronimo	404	415	437	438
Patricia McIntyre (recalled)	453 598	477	580	582

EXHIBIT INDEX

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
5	242	
6	290	
3		325
3B		327
7	331	
8	342	392
9,10	384	392
1		385
2,3A		389
3AA,3AB		390
11	550	
12,13	562	569

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT INDEX

843

<u>Government</u>	<u>Identification</u>	<u>In Evidence</u>
14	577	579
15	589	
16	601	
<u>Defendant</u>		
A	461	464
B		469
C	477	
<u>Court Exhibits</u>		
1	768	
4	823	
5	824	

